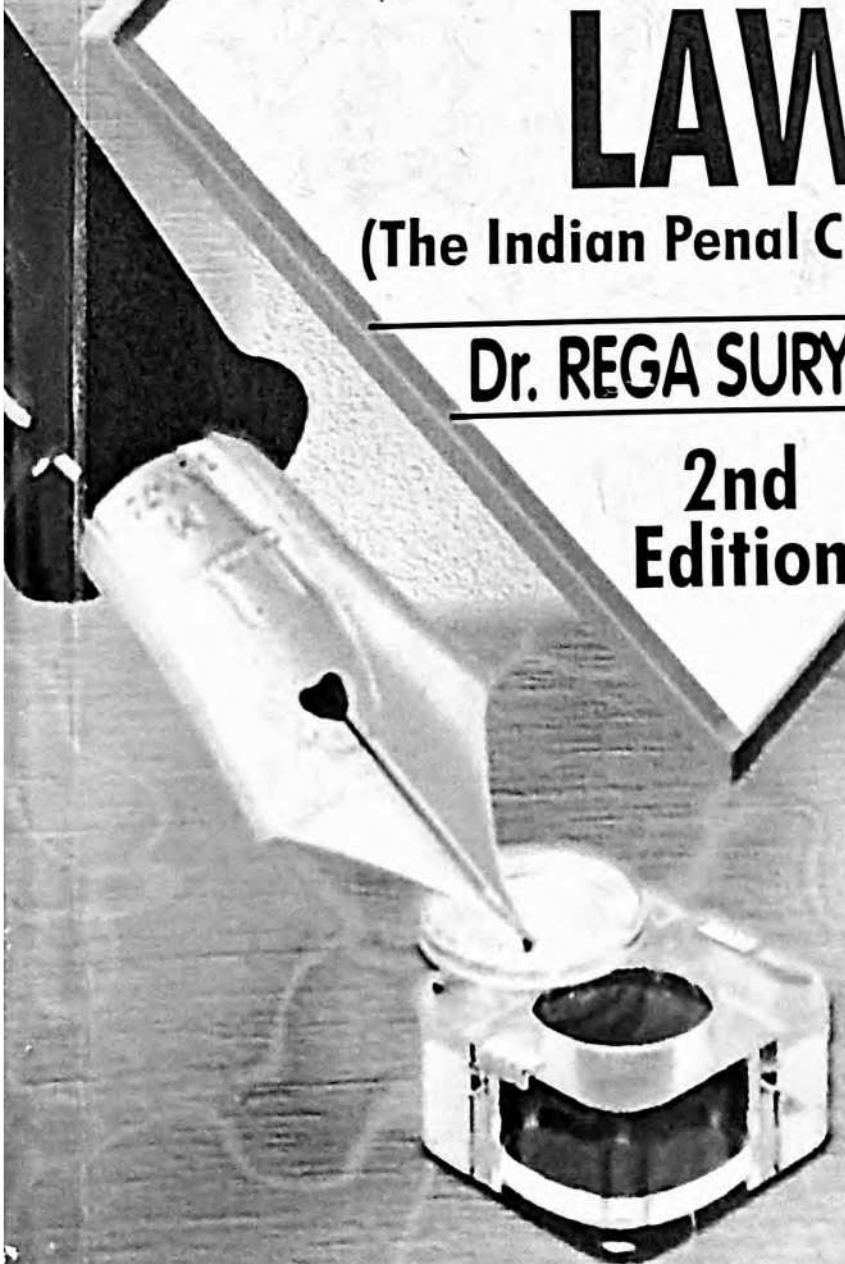
ASIA LECTURE SERIES

LECTURES ON CRIMINAL LAW

(The Indian Penal Code, 1860)

Dr. REGA SURYA RAO

2nd Edition



ASIA LAW HOUSE
Hyderabad

LECTURES ON
CRIMINAL LAW
(The Indian Penal Code, 1860)

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LECTURES ON CRIMINAL LAW
(The Indian Penal Code, 1860)

LECTURE–I
INTRODUCTION

Almost every individual in this universe, intentionally or unintentionally, knowingly or unknowingly commits an act, which ought not to be committed, and omits an act, which ought not to be omitted, resulting in wrong causing injury to another's person, property or reputation. If the wrong causes the injury to another or group of persons, it is a private wrong which has to be redressed in a civil court and hence, it (private wrong) is called a civil wrong (e.g. tort, breach of contract etc.). If the wrong causes injury to the society as a whole or the public at large, it is called "public wrong", which is also known as crime and is termed as "an offence" in the Penal Code. It is tried in a criminal court to punish the offender. In the interests of the individual in particular and the public in general, regulation of wrongs is very essential and hence, it is the primary function of the State anywhere in this world. The State, with the help of law, through the administration of justice maintains the law and order, establishes peace and ensures social security. In simple words, law is a rule of human conduct imposed and enforced by the State.

The term law denotes various kinds of rules and principles and is used in various senses. It (law) is an instrument that regulates human conduct. Earlier, there was no distinction as to private wrong or public wrong nor classification of law. Today, laws are categorized under different heads namely, natural law, conventional law, customary law, civil law, special law etc. Similarly, law is classified into various heads namely International Law (e.g. Public International Law, Private International Law), Municipal Law or National Law (e.g., Constitutional Law), Private Law (e.g., the Indian Contract Act, 1872, the Transfer of Property Act, 1882), Public Law (e.g., Administrative Law), Civil Law, Criminal Law etc. Among the branches of the Public Law, Criminal Law is of great importance. It is broadly divided into two categories namely, Substantive Law

of Crimes and Procedural Law of Crimes. The substantive law is embodied in the Indian Penal Code, 1860. It defines various offences and prescribes punishments for the respective offences and is prescribed for study as "Criminal Law-I". Whereas the other branch, Procedural Law of Crimes is embodied in the Code of Criminal Procedure, 1973. It provides mechanism for the enforcement of the Criminal Law and is prescribed for study as a separate subject entitled "Criminal Law-II". Apart from these two main branches of the Criminal Law, there are so many special branches i.e., special legislations namely, the Dowry Prohibition Act, 1961, the Medical Termination of Pregnancy Act, 1971, the Protection of Women from Domestic Violence Act, 2005 etc.

The present subject, Criminal Law-I (The Indian Penal Code, 1860) deals with the substantive law of crimes. It defines various offences and prescribes punishments for the respective offences. It came into force on 1st January, 1862. It is a territorial law, applies to the whole of India. At the time of enactment, it consisted of 488 sections divided into 23 Chapters. In view of amendments from time to time, the number of sections in the Code rose to 511 divided into 26 Chapters with the inclusion of three more Chapters VA, IXA and XXA. Since its enactment as a major substantive penal law for more than one and half centuries (160 years), there have been 78 Amendment Acts till 2019 pertaining to the Penal Code and other related branches of the Criminal Law.

It is significant to note that only three Chapters viz., Chapter VA containing sections 120A and 120B (inserted/added by the Criminal Law (Amendment) Act, 1913) dealing with Criminal Conspiracy, Chapter IXA containing sections 171 A to 171-I (inserted/added in the Code by the Indian Elections Offences and Inquiries Act (XXXIX of 1920) dealing with the offences relating to election viz. bribery, undue influence etc., and Chapter XXA containing section 498A (inserted by the Criminal Law (Second Amendment) Act of 1983 dealing with cruelty by husband or relatives of husband of a married woman, have been added to the Indian Penal Code during the last 153 years. Further, the number of sections

deleted/repealed from the Code and new sections inserted/added to the Code are detailed below—

Sections 13, 15, 16, 56, 58, 61, 62, 161 to 165, 478, 480, 490 and 492 have been deleted. Some new Sections, 29A, 53A, 55A. 108A, 120A, 120B, 121A, 124A, 138A, 153A, 153AA, 153B, 171A to. 171I, 174A, 195A, 216A, 261B, 225A, 225B, 228A, 229A, 263A, 294A, 295A, 304A, 304B, 363A, 364A, 366A, 366B, 376A to 376S, 477A, 489A to 489E, 498A have been added/ inserted.

The subject, Criminal Law-I dealing with the Indian Penal Code comprises of two parts as stated below—

Part I: General Principles and Defences and

Part II: Specific Offences.

Part I of the Code deals with the principles viz., *Mens rea,* Common Intention, Common Object, Abetment, Criminal Conspiracy etc., and General Defences/Exceptions viz., Mistake, Necessity, Infancy, Insanity, Right of Private Defence etc., and other aspects in general.

Part II of the Code provides for the definitions of various Specific Offences and prescribes punishments for the respective offences as stated hereunder:

1. Offences against the State (Sedition, Waging War etc.,- Ch.VI: Sections 121-130 including Sections 121A and 124 A).
2. Offences relating to the Army, Navy and Air Force (Abetting mutiny, attempting to seduce a soldier, sailor or airman from his duty - Ch. VII: Sections 131-140).
3. Offences against the Public Tranquility (Unlawful Assembly, Riot, Affray etc. - Ch. VIII: Sections 141-160 including Sections 153A, 153AA and 153B).
4. Offences relating to Public Servant (Bribery, Unlawful Trade, Personating another public servant etc. - Ch. IX: Sections 166 to 170 (Sections 161 to 165A omitted).

5. Offences relating to Elections (Bribery, Undue Influence, Failure to keep election accounts etc., - Ch. IX A: 171 A-171 I).
6. Contempts of the Lawful Authority of the Public Servants (Absconding to avoid service of summons, Furnishing false information, Obstructing public servant in discharge of public functions, Threat of injury to public servant etc., - Ch. X: Sections 172-190 (including Section 174A).
7. False Evidence and Offences against Public Justice (Giving false evidence, Fabricating false evidence, False Certificates, False declarations, Resisting the Law, Contempt of Court etc., (Ch. XI: Sections 191 to 229A including Sections 195A, 216A, 216B, 225A, 225B and 228A).
8. Offences relating to Coin and Government Stamps (Counterfeiting coins, Alteration of coins, Counterfeiting of Government Stamps etc., - Ch. XII: Sections 230-263A)
9. Offences relating to Weights and Measures (Fraudulent use of false instrument for weighing, making or selling of false weights and measures etc., - Ch. XIII: Sections 264-267).
10. Offences affecting the Public Health, Safety, Convenience, Decency and Morals (Public Nuisance, Adulteration of food or drink intended for sale, Adulteration of Drugs, Negligence conduct with respect to poisonous substance, fire, combustible matter, explosive, keeping Lottery Office etc., (Ch. XIV: Sections 268-294 A).
11. Offences relating to Religion (Defilement, Outraging the Religious Feelings, Disturbing Religious Assemblies etc., (Ch. XV: Sections 295-298 including Section 295A).
12. Offences affecting the Human Body (Culpable homicide, Murder, Causing death by negligence, Dowry death, Hurt, Grievous hurt, Wrongful confinement, Criminal Force and Assault, Kidnapping, Abduction, Slavery and Forced Labour, Rape, Unnatural Offence etc., (Ch. XVI: Sections

299 to 377 including Sections 304A, 304B, 326A, 326B, 354A, 354B, 354C, 354D, 363A, 364A, 366A, 366B, 370A, 376A, 376B, 376C, 376D and 376E).

13. Offences against Property (Theft, Extortion, Robbery and Dacoity, Criminal misappropriation of property, Criminal breach of Trust, Receiving of stolen property, Cheating, Fraudulent deeds and dispositions of property, Mischief, Criminal Trespass etc., (Ch. XVII: Sections 378 to 462).

14. Offences relating to Documents and Property Marks (Forgery, False Documents, Currency notes and Bank notes etc., (Ch. XVIII: Sections 463 to 489E including Sections 477A, 489A, 489B, 489C and 489D).

15. Criminal breach of contracts of Service – (Ch. XIX: Sections 490-492. (490 and 492 Repealed).

16. Offences relating to Marriage (Bigamy, Adultery etc. (Ch. XX: Sections 493-498).

17. Cruelty by Husband or his relatives (Ch. XX A: Section 498A).

18. Offences affecting reputation – (Defamation – Ch. XXI: Sections 499-502).

19. Criminal Intimidation, Insult and Annoyance (Ch. XXII: Sections 503-510).

20. Attempts to Commit Offences (Ch. XXIII: Sec. 511).

PART-I

GENERAL (PRINCIPLES & DEFENCES PRINCIPLES)

LECTURE–II

CRIME: MEANING, DEFINITION AND NATURE

Meaning: Wrong takes place in two ways viz., by commission of an act (i.e., killing a person by giving/administering poison or by a negligent surgical operation) or by omission of an act (i.e., killing a person without giving food or by omitting to give medical aid in time). (The word 'act' denotes as well a series of acts as a single act, and the word 'omission' denotes as well a series of omissions as a single omission – Sec. 33, I.P.C.). The wrongs may be broadly categorised under two heads, namely: (1) Private Wrongs and (2) Public Wrongs. Private wrong causes injury to an individual or a group of individuals (E.g. Private nuisance) and the injured/aggrieved can approach the Court (Civil Court) for the relief/redressal. Whereas, the public wrong causes injury to the society/community or public as a whole. It (public wrong) is pursued by the state or its subordinate authorities viz., Police, Criminal Courts, Prison and Disciplinary Authorities etc.

'Crime' is a public wrong. It is an offence against the community or society as a whole. It causes threat to social security and creates social disorder. E.g. Murder, Rape, Theft, Robbery, Forgery etc.

Definition: The word 'Crime' is derived from Greek word "*Krimos*", which means "social order" and it is applied "to those acts that go against social order and are worthy of serious condemnation." It is very difficult to give a correct and precise definition of the term 'crime'. However, many attempts were made to define the term 'Crime'. Prominent among them are given below:

1. ***Blackstone's* Definition:** *Sir William Blackstone*, in his 'Commentaries on Law of England', defined 'Crime' as "an act committed or omitted in violation of Public Law either forbidding or commanding it".

2. ***Sir James Stephen:*** "Crime is an act, which is both forbidden by law and revolting to the moral sentiments of the society."

3. *Kenny:* *Kenny* (as approved by *Austin*) defines Crime as "Crimes are wrongs whose sanction is punitive and in no way remissible by any private person, but is remissible by the Crown alone, if remissible at all".

4. *Paton:* According to Paton, "In Crime we find that the normal modes are that the State has power to control the procedure to remit the penalty or to inflict punishment."

5. *Keeton:* Keeton has defined crime as, "A Crime today would seem to be any undesirable act, which the State finds it most convenient to correct by the institution of proceedings for infliction of penalty instead of leaving the remedy to the discretion of some injured person."

6. *Indian Penal Code*: As there is no satisfactory definition it is not defined in the Indian Penal Code. The word 'Offence' is used in the Penal Code in the place of Crime. According to Sec. 40 of the Indian Penal Code, except in the Chapters and Sections mentioned in Clauses 2 and 3 of this Section, the word "offence" denotes a thing punishable by this Code.

It is to be noted the definition under Section 40 refers to offences prescribed by the Indian Penal Code, 1860.

The Code of Criminal Procedure, 1973:– According to Section 2 (n) of the Code of Criminal Procedure, 1973, "Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which complaint may be made under Section 20 of the Cattle Trespass Act, 1871. The definition under Section 2 (n) refers to offences under different laws apart from the offences under the Indian Penal Code.

As stated earlier, offence takes place in two ways viz., (1) Commission of an act. E.g. Killing a person with knife or by administering poison and (2) Omission of an act. E.g. Killing a person without giving food.

Therefore, all acts and omissions, which are described as offences under the Penal Code, are Crimes and are punishable under the Code. Crime is a public wrong in the sense, any member of the public can institute criminal proceedings against the person

accused of an offence. However, there are certain exceptional cases viz. Matrimonial Crimes, Dowry Crimes, Defamation etc., in respect of which, the persons concerned alone can institute the criminal proceedings.

Nature of Crime: Crime is a social phenomenon. It varies from place to place. What is Crime in one place, is not a crime in another place. For instance, Adultery is an offence in India under Sec. 497 I.P.C. But, it is no offence in America. It is a civil wrong in England. It changes from time to time. What is a crime today, may not be a crime tomorrow. For instance, consumption of alcoholic drinks is not an offence today. If the State passes a legislation banning the consumption of alcoholic drinks, it will be an offence. Likewise, the practice of 'Sati' prevailing in the primitive society was not an offence in those days. But, it is now strictly prohibited and is punishable.

The State/Law prescribes certain standard of conduct to be observed by an individual in the society. Any deviation from the prescribed standard fixed by the State amounts to crime and is punishable.

A crime constitutes two elements namely, (i) mala-in-se and (ii) mala-prohibita. For instance, traditional crimes like murder, theft etc., are known as mala-in-se, while the other crimes, in which there is no element of immorality in the traditional sense are known as mala-prohibita. For instance, Adultery, which is no offence in America, is an offence in India. Similarly, Poligamy (to have more than two wives) is an offence in Hindu Law, but it is no offence in Mohammedan Law, as a Muslim/Mohammedan male can have four wives at a time.

The nature of crime can be better understood by distinguishing between the Tort and Crime as explained below:

Distinction between Tort and Crime: Wrongs may be broadly classified as: (1) Private Wrongs and (2) Public Wrongs. Private wrong is also known as civil wrong since it is redressible in a Civil Court. Tort is a kind of civil wrong.

Before distinguishing the crime from the Tort, it is necessary to know the meaning and definition of the Tort as follows:

Tort: Meaning and Definition: The term 'Tort' is derived from the Latin word 'Tortum', which means 'Twisted'. Its equivalent English word is 'Wrong' or 'Wrongful act'. It is one of the private/ civil wrongs. Private wrong causes injury to one or more persons. The person, who commits tort is called "Tort-Feasor". The other person/persons, who suffer injury (to his/her person/property/ reputation) is called aggrieved. The aggrieved can sue the tort-feasor in a civil court for redressal/relief. Hence, it is called a civil wrong. Therefore, tort is one of the civil wrongs (the other civil wrongs are, breach of contract, breach of quasi-contract, breach of trust etc.).

It is very difficult to define the term tort. Several attempts were made to define tort. Prominent among them are detailed below—

1. Winfield: *Prof. Winfield* defined Tort as "tortious liability which arises from the breach of duty primarily fixed by law, this duty is towards persons generally and its breach is redressible by an action for unliquidated damages."

2. Solmond: *Sir John Salmond,* a distinguished jurist and an eminent brain on the subject defmed Tort as "a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or :he breach of trust or other merely equitable obligation."

Following are the notable points of distinction between Crime and Tort:

	Crime		Tort
1.	Crime is a Public Wrong	1.	Tort is a Civil Wrong.
2.	The person who commits Crime is called accused (before guilt is proved) and convict (after guilt is proved) or criminal.	2.	The person who commits Tort is called 'Tort Feasor' or 'Wrong Doer.'
3.	It is an offence against the public at large or society as a whole.	3.	It causes injury or damage to an individual or group of individuals.

4. It is tried in Criminal Court.	4. It is tried in Civil Court.
5. The object of Criminal Law is to punish the criminal and to establish peace and security.	5. The object of the law of Torts is to provide remedy/relief to the injury.
6. Generally, law does not permit settlement of a criminal case by compromise between the parties. However, Sec. 320 Cr.P.C. provides for an exception to the general rule. (Sec. 320 Cr.P.C. deals with Compoundable Offences).	6. Law permits the parties (The injured party and the tort-feasor) to settle the dispute. In other words, the plaintiff can withdraw the suit filed by him (Tort litigation is compoundable).
7. Criminal Law is codified.	7. Law of Torts is a judge made law. It is not codified.
8. In Criminal Law, burden of proof lies in the State.	8. In law of torts, the burden of proof lies on the aggrieved.
9. The amount collected by way of fine/penalty goes to the State.	9. The amount of compensation by way of unliquidated damages goes to the aggrieved.

Distinction between Crime and Breach of Contract: Contract is an agreement entered into between two or more persons/parties subject to certain terms and conditions for a lawful consideration. Section 2(h) of the Indian Contract Act, 1872 defines contract as "an agreement enforceable by law". In a contract, both parties have obligation. If one party fails to fulfil the contractual obligation, it amounts to "Breach of Contract". Then, the other party files a suit in the Civil Court to enforce the agreement. Following are the notable points of difference between Crime and Breach of Contract.

Crime	Breach of Contract
1. It is a Public Wrong and causes injury to the public as a whole.	1. It is a Private Civil Wrong and causes damage to an individual or group of individuals (of the opposite party).
2. It is an infringement of 'right in *rem*'.	2. It is an infringement of 'right in *personam*'.
3. It is tried in a Criminal Court.	3. It is tried in a Civil Court.
4. The object of criminal law is to punish the Criminal.	4. The object of the law of Contracts is to provide relief (viz. specific performance, damages, injunction etc.) against the breach of contract by the other party/parties.
5. In Criminal Law, the fine imposed on the criminal/convict goes to the State. However, under Sec. 406(3) Cr.P.C. the compensation not exceeding Rs.1,000/- goes to the victim/ aggrieved.	5. In Law of Contract, the defendant is directed to pay damages to the plaintiff. In other words, the amount goes to the plaintiff.

LECTURE-III

ELEMENTS OF CRIME

Crime: Meaning and Definition: Refer meaning of Crime and the definitions of Crime by *Blackstone*, the Indian Penal Code and Cr.P.C. from Lecture-II.

Elements of Crime: To constitute Crime, the following elemerts are to be satisfied.

1. Human Being.
2. *Mens Rea* (Mental element or Evil intent).
3. *Actus Reus* (Act or Omission); and
4. Injury.

Among the above four, *mens rea* and *actus reus* are considered to be most essential to constitute a crime.

1. Human Being: The first essential element of Crime is that it must have been committed by a human being. He/She must be under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment. Generally both the wrong doer and aggrieved/injured/deceased are human beings. In olden days, animals also were punished for committing crimes. (At present, its owner is subject to Civil/Tortious liability – Scienter Rule. Under the Wild Life (Protection) Act, 1972, wild life (Tiger, Deer etc.) forms part and parcel of the environment. Any person, who contravenes/violates the provisions of the Act is punishable with imprisonment for a term, which may extend to three years or with fine, which may extend to Rs.25,000/- or with both).

2. *Mens Rea*: ***Mens Rea*** means "mental element or civil intent or guilty mind". One of the fundamental principles of our legal system is to determine punishment depending upon mental condition of the accused. In other words, criminal liability depends upon the evil intent or guilty mind, which is known as ***mens rea.*** It means an intention to do a forbidden act.

The term '***mens rea***' is not defined in the Penal Code. It may be defined as "the mental element necessary to constitute

criminal liability." According to *Samshul Huda*, an eminent Jurist, "the very corner-stone of criminal jurisprudence is the ***mens rea.***"

Mens rea means "an intention to do a forbidden act". The term '***mens rea***' is not defined in the Penal Code. It is expressed in the Latin maxim "***actus non facit reum nisi mens sit rea***" as a fundamental principle for penal liability. It means, 'intent and act both must concur to constitute a Crime. In other words, an act itself is no crime, unless it is coupled with an evil intent. In ***Sweat vs. Parsley*** **(1970) AC 132, 162:** Lord Diplok said, "An act does not make a man guilty of a crime, unless his mind be also guilty.

A person to be held guilty of a crime, it is necessary that he had an intention to do it. Similarly, a person to be held guilty of theft, it should be established that he had an intention to steal.

E.g.: If 'A', intentionally kills 'B' with a knife or by administering the poison, 'A' is guilty of murder and is awarded serious punishment viz., life imprisonment or death sentence under Sec. 302 I.P.C. If 'A' commits an accident causing the death of 20 persons, he is punishable upto 2 years imprisonment under Sec. 304 A, I.P.C. In case, the accident is inevitable, i.e., there is no negligence on the part of the accused (i.e., driver of the vehicle) he is exempted from the criminal liability. In this example, even though 'A' killed 20 persons, he was awarded small punishment i.e., upto two years imprisonment, if there is negligence on his part. In the absence of negligence, the accident is of misfortune and hence, he is completely exempted from the criminal liability. But he was awarded serious punishment i.e., life imprisonment or death sentence for killing only one person. The reason is, in the case of intentional killing, '***mens rea***' is present. But in the case of the latter (accident), '***mens rea***' is absent. Thus, ***mens rea*** plays an important role in imposition/determination of criminal liability.

In the primitive society i.e., before the 13th century, the concept of '***mens rea***' was non- existent as it was not taken into consideration, while fixing the criminal liability. However, it was fully established during the 14th and 15th centuries. By the end of the 17th century, it was universally settled law that '***mens rea***'

is an essential ingredient of crime. No act of the person was punishable in the absence of ***mens rea.***

The principle relating to ***mens rea*** is well highlighted by Lord Wright in '***Shenas v. De Rutzen*** **[(1895) IQB 918]** as— "*There is a presumption that* ***mens rea****, an evil intention or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence, but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered.*"

Mens rea is an essential ingredient in every crime except in the following two types of offences where the presence of ***mens rea*** is not important:

(i) the misdemeanours of causing a public nuisance, in which a person may be held liable.

(ii) the Criminal Contempt of Court.

According to Wright, J. the ***mens rea*** is an essential ingredient in every offence except in three cases:—

(i) cases which are not criminal but are prohibited in the public interest under penalty;

(ii) public nuisance and

(iii) the cases which are in the form of criminal cases but actually are for enforcing a civil right.

Therefore, there can be no crime without an evil mind and hence, the essence of an offence is ***mens rea.***

MENS REA IN STATUTORY CRIMES (ENGLISH LAW)

There are certain circumstances under which the State, by legislation/statute prohibits the doing of certain acts irrespective of the considerations of ***mens rea*** (or without taking into consideration the doctrine of ***mens rea***). In England, '***mens rea***' is an essential ingredient of a crime/an offence. It is applied in all common law cases (Common Law means 'Judge made Law') without any reservations. It is also applied in statutory offences with certain reservations. The application of ***mens rea*** in statutory offences may be explained in the following leading cases:

***R. vs. Prince* (1875) 2 C.Cr 154:** It is a leading case on the point, where accused can be convicted irrespective of '**mens rea.**'

Facts of the Case: According to Sec.55 of the Offences against Person Act, 1861 (in England), "taking away an unmarried girl below the age of 16 years from the lawful custody of her parent or guardian against the will of her parent/guardian itself is an offence and hence such person is guilty of misdemeanour" and the principle of ***mens rea*** need not be taken in to consideration, while fixing the criminal liability of the accused.

Mr. Prince, the accused in the instant case, was in love with a girl Miss. Annie Philips, who was an unmarried girl below the age of 16 years. The accused had taken her away the from the lawful custody of her parents with an intention to marry her. He thought that, she was above 16 years of age and the girl told him that, she was 18 years old. The father of the girl lodged a complaint, alleging that Prince had illegally taken away his unmarried minor daughter below the age of 16 years. Prince was arrested and the criminal proceedings were instituted against him.

Decision/Judgment: The Court through *Blackburn J.*, rejected the contention/defence on the part of the accused on the ground that, the accused in good faith believed and had reasonable ground for believing that the girl so taken by him was over sixteen, and held that the accused, guilty of misdemeanour (kidnapping) under Sec. 55 of the Offences Against Person Act, 1861.

The accused, though he had no ***mens rea***, was convicted on the ground that his act of taking away an unmarried girl below the age of 16 years from the lawful custody of her parent itself was an offence punishable irrespective of the proof of ***mens rea***.

Principle: The principle applied in the instant case was, "whosoever shall unlawfully take away an unmarried girl, under the age of 16 years out of the possession and against the will of her father or mother shall be guilty of a misdemeanour".

Blackburn J., said "we are of opinion that the intention of the legislature sufficiently appears to have been to punish the abduction, unless the girl in fact was of such an age to make her

consent an excuse, irrespective of whether he knew her to be too young to give an effectual consent and to fix that age at sixteen years. The man who has connection with a child, relying on her consent, does it at his peril, if she is below the suitable age". *Bramwell B.* added, "the legislature has enacted that, if any one does this wrong act he does it at the risk of her turning out to be under sixteen".

In ***R. vs. Bishop,*** **(S.Q.B.D. 259)** the accused was convicted for receiving lunatics in an unlicensed house, although he honestly and on reasonable grounds believed that they were not lunatics.

Granville Williams says that "although a requirement of *mens rea* will generally be implied into a statute, this *mens rea* generally means only the intent to do the forbidden act, it does not generally require a dishonest intent or to intend defraud".

In ***R. vs. Bishop,*** **(S.Q.B.D. 259):** The accused in this case was convicted for receiving lunatics in an unlicensed house, although he honestly and reasonably believed that they were not lunatics.

R. vs. Mrs, Talson, **(1889 Q.B.D. 168):** "Marrying again during the life time of the other spouse amounts to bigamy and is punishable under Sec. 57 of the Offences against Person Act, 1861. Similarly, bigamy is an offence under Sec. 494 of the Indian Penal Code, 1860.

Facts: Mrs. Talson married Mr. Talson in September, 1880. Her husband deserted her in 1881. Mr. Talson's whereabouts were unknown for more than 7 years. She made all enquiries about her husband and learnt from reliable sources that he died in a ship-wreck. Mrs. Talson got remarried in 1887 reasonably believing that her husband died. Some time, after her remarriage, her first husband reappeared and charged her for bigamy.

Judgment: The trial Court convicted her for one day. On appeal; she was acquitted on the ground that she had no *mens rea.*

In ***R. vs. Wheat & Stock,*** (1921) 2 K.B. 119: The accused in the instant case, was an illiterate. He was informed in good faith that he had been granted divorce and he got remarried. His first wife charged him for bigamy. The Court held him guilty of bigamy and convicted him.

Talson's case and Wheat's case are quite distinct from each other. In the former, there was a mistake of fact, which is excusable and hence Mrs. Talson was acquitted, while in the latter case, there was a mistake of law, which is not excusable, and hence, the accused was convicted.

The above case law makes it clear that there had been a confusion with regard to the application of the doctrine of ***mens rea*** in statutory offences. Therefore, the doctrine has been resurrected and is made applicable not only to common law offences, but also to statutory offences.

INDIAN LAW (APPLICATION OF THE DOCTRINE OF *MENS REA* IN INDIAN CASES):

The word '***mens rea***' has nowhere been used in I.P.C. But it has been applied in two different ways to avoid confusion.

1. The actual intent required for the offence was used in defining the offences.
2. The expression fraudulently, dishonestly, voluntarily and intentionally etc., are used in the definition to indicate the criminal intent.

The doctrine of ***mens rea*** has been applied by the Indian Courts. It is now settled that ***mens rea*** is an essential ingredient of an offence. But, it is not essential in respect of certain offences viz., Waging War (Sec. 121), Sedition (Sec. 124A), Kidnapping (Sec. 359), Abduction (Sec. 363), of Coins (Sec. 232) etc. The framers of the Indian Penal Code, while drafting the Code used the words viz., Voluntarily (Sec. 39), Fraudulently and Dishonestly (Sections 24, 25), Corruptly, Malignantly, Maliciously, Wantonly etc., which are equivalent to the word '***mens rea***'.

The word 'Voluntarily' has a more extended meaning than the word 'intentionally'. According to Section 39 of the Code, "a person is said to cause an effect voluntarily, when he causes it by means, which at the time of employing those means, he knew or had reason to believe to be likely to cause it". In simple words, the word 'Voluntarily' means, "an act done without influence or compulsion."

The word 'Fraud' has not been defined in I.P.C. But, according to Section 24 I.P.C. "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise." The word 'Dishonestly' according to Sec. 24 I.P.C., means "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another is said to do that thing dishonestly."

Corruptly denotes impropriety brought about by bribery, undue influence resulting in acts which are not consistent with the proper discharge of official duty or the right of others. The words 'Currupt' and 'Curruptly' usually imply that an act is done dishonestly without integrity for the sake of unlawful gain or advantage.

An act done with a desire to hurt with a deep-rooted ill will or do harm to life violently.

Russel defines 'malice to be any formed design of doing mischief. Miller says that malice is a wrongful act done intentionally without just cause or excuse. Malice in its ordinary sense means any wicked or mischievous intention, a depraved inclination to mischief or a wanton disregard of the safety and rights of others. A thing is done 'maliciously'. If it is done wickedly or in a depraved, perverse or malignant spirit or in a spirit regardless of social duty and deliberately bent on mischief.

Wantoly means doing a thing recklessly or thoughtlessly without regard to its consequences. It implies a state of mind that is heedless, without excuse, regardless of the rights of others, reckless and perverse.

Relevant Case Law:

***Srinivasamall vs. Emperor*, AIR 1947 PC 135 –**

Facts: Srinivasamall was a salt distributor. His servant (clerk) infringed a rule without his (master's) knowledge. He was acquitted on the ground that he had no guilty intention (i.e. ***mens rea***) since the act was committed without his knowledge.

***Ravula Hari Prasad Rao vs. The State*, AIR 1951 SC 204:** In this case, a servant of a petrol dealer supplied motor spirit without coupons and also received advance coupons without supplying motor spirit. The Supreme Court convicted the master

even though he had no knowledge as to the act (i.e., in the absence of *mens rea*). He was convicted for non-endorsement of coupons which was mandatory/compulsory.

Sankaran Sukumaran v. Krishnan Saraswalthi **[1984 Cr.LJ 317]:** In this case, the Supreme Court observed that ***mens rea*** is an essential ingredient of the offence under Section 494 **(Bigamy),** where the second marriage has been entered in a *bona fide* belief that the first marriage was not subsisting, no offence under Section 494 is committed.

Staff of Maharashtra v. M.H. George: In this case, the Supreme Court considered the application of the principle of ***mens rea*** in statutory offence, M.H. George carried gold bars on persoh as a passenger from Zurich to Manila in a Swiss plane and found at Bombay airport as the bringing of gold into India was prohibited except with permission of RBI. The Presidency Magistrate found him guilty but the Bombay High Court held that he was not guilty on the ground that ***mens rea*** being a necessary ingredient in the offence, the respondent who brought gold into India for transit to Manila did not know that during the crucial period such a condition had been imposed which brought the case within the terms of the statute. On appeal by the State, the Supreme Court allowed the appeal and found the accused guilty for contravention of the provisions of Section 8(1) of the Foreign Exchange Regulation Act, 1947.

Nathu Lal v. State of MP **[AIR 1966 SC 43]:** In this case, the appellant has a stock of wheat for the purpose of sale without licence. He contended that he had stored the food grains after applying for the licence and was in the belief that it would be issued to him. He had also deposited the requisite licence fee. He was purchasing food grains from time to time and sending returns to the Licensing Authority showing the grains purchased by him. He was prosecuted for committing an offence under Section 7 of the Essential Commodities Act, 1955 for contravening an order made under Section 3 of the same Act. In this case, the Court held that the storage of food grains was under a *bona fide* belief that he could legally do so and he did not intentionally contravene the Act. He was acquitted.

R.S. Joshi v. Ajit Mills Ltd., [(1977) 4 SCC 94]: In this case, the Supreme Court observed that a person may be liable for the penal consequences for the act done by him whether he has done it with guilty mind or not. It is a matter of common knowledge that for proper enforcement of statutory provisions, the rule of strict liability is created and the acts falling in this category are punished even in the absence of guilty mind.

Malhan K.A. v. Kora Bibi Kutti [(1996) SCC 281]: In this case, the accused was a financier. He seized a vehicle for which he financed but did not receive the instalments. The person from whom the vehicle was seized complained to police alleging that the accused had stolen his vehicle. The Supreme Court held that the element of *mens rea* is totally wanting in this case and the accused was left without any conviction under Section 379 of the IPC.

3. *Actus Reus* (Physical Act: Act or Omission): A human being and an evil intent (*mens rea*) would not constitute a crime as the intention (first stage in commission of a crime) to commit a crime is not punishable. The criminal/evil intent, in order to be punishable must become manifest in some voluntary act or omission, known as *actus reus*.

The expression '*Actus Reus*' denotes 'Physical Act', which includes an act or omission as well. To constitute crime, there must exist commission or omission of an illegal act. When the intention is to do a prohibited act, it is known as '*actus reus*'.

The term *actus reus* has been given a much wider meaning by Glanville Williams in his *Criminal Law*. He says:

When we use the technical term *actus reus* we include all the external circumstances and consequences specified in the rule of law as constituting the forbidden situation. *Reus* must be taken as indicating the situation specified in the *actus reus* as on that, given any necessary mental element, is forbidden by law. In other words, *actus reus* means the whole definition of the crime with the exception of the mental element and it even includes a mental element in so far as that is contained in the definition of an act. This meaning of *actus reus* follows inevitably from the proposition that all the constituents of a crime are either *actus reus* or *mens*

Actus reus has been defined as 'such result of human conduct as the law seeks to prevent'.

The word '*actus*' connotes a 'deed', a physical result of human conduct. The word '*reus*' means 'forbidden by law'. The term '*actus reus*', may, therefore be defined as "such result of human conduct as the law seeks to prevent."

According to Section 32 of the IPC, in every part this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

According to Section 33 of the IPC, the word 'act' denotes as well a series of acts as a single act, the word 'omission' denotes as well a series of omissions as a single omission.

***Omprakash vs. State of Punjab,* AIR 1956 All. 241:** In this case the accused omitted to provide food to his wife and locked her in a room. She had escaped and charged him. The Supreme Court convicted the accused for attempt to commit murder.

4. Injury: The last ingredient to constitute Crime is 'Injury'. Injury means to cause harm to any person in body, mind, reputation or property. The injury must cause the harm to another human being or to the society in general or to the public at large. According to Section 44 of the Code, the word "injury" denotes any harm, whatever illegally caused to any person, in body, mind, reputation or property. "The act by which injury is caused must be proximate, but not consequential. For instance, A digs a ditch in front of his house on the public way leaving it uncovered, causing public nuisance. B, a motor cyclist fell in that ditch and received injury, it is a proximate injury. In case, he takes diversion because of the ditch and fell down in the next street, the injury is consequential.

As stated above, to constitute crime, the above four elements viz., human being, evil intent (*mens rea*), *actus reus* and injury are to be present. However, there are some exceptional cases in which crime is constituted in the absence of one or more constituents. For instance, in the offence of bigamy under Section 494, the offence is constituted even though the *actus reus* has not consumated. Similarly, in case of inchoate crimes i.e., attempt to commit a crime in which injury is absent and is punishable under Section 511.

Further, very serious crimes like waging war (Sections 121-123), sedition (Sec.124A) etc., are punishable in the absence of *actus reus* and injury.

NOTE: Out of the above four elements, *Mens rea* is most important. Question may be asked as 'Define Crime and what are the Elements of Crime'? OR The question may be asked only on *Mens rea.*

LECTURE-IV

STAGES IN COMMISSION OF A CRIME

Commission of a Crime involves four stages, namely:

1. Intention;
2. Preparation
3. Attempt; and
4. Accomplishment.

1. Intention or Contemplation: It is the first stage in the commission of an offence. The word 'intention' means that an intended act is in the future and the law makes relevant statements made by a conspirator with reference to the future. Criminal intention means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse. It (criminal intent) is a psychological fact, which is very difficult to prove.

Intention is the conscious voluntary exercise of the mental faculties of a person to do an act, for the purpose of accomplishing or satisfying a purpose. Intention has been defined as the fixed direction of the mind to a particular object, or determination to act in a particular manner and it is distinguishable from motive that which incites or stimulates action. Every person is presumed to be sane and capable of understanding the nature and extent of consequences of the act, he/she is doing, unless the contrary is proved.

It is very difficult for the prosecution to prove the guilty intention of person to commit an offence. Intention to commit the crime is not punishable unless it is made known to the others either by words or conduct. In Indian Law also, mere intention to commit a crime is not punishable. However, law takes notice of such intention. In certain exceptional cases as stated below—

E.g.: Waging War against the Government. (Sections 121 to 123 I.P.C.), Sedition (Sec. 124 A I.P.C.) are considered as serious offences and mere intention to commit them is punishable. Similarly, mere assembly of persons for committing the dacoity without any further preparation is punishable under Sec. 402 I.P.C.

2. Preparation: The second stage in commission of a crime is 'preparation'. 'Preparation' means "to arrange the means or measures necessary for commission of the intended criminal act." Preparation is the action of preparing or getting ready (Sec.8, Indian Evidence Act); something that is prepared; something made for a specific purpose (Sec. 276, IPC); to make ready before hand. It is very difficult for the prosecution to prove that necessary preparation has been made for the commission of the offence. For instance, 'A' purchased a pistol and got it loaded and keeps the same in his pocket in order to kill 'B'. But, it is not possible to prove that 'A' is carrying the loaded pistol only to kill 'B'. Similarly, purchasing a knife with the intention to kill someone is not a crime because it cannot be determined whether the knife was bought to kill someone or to cut vegetables.

Mere preparation is punishable under I.P.C. in respect of the following offences:

1. Waging War (Sec. 122).
2. Preparation to commit dacoity (Sec. 399).
3. Preparation for counterfeiting coins and Government Stamps (Sections 233 to 235, 255 and 257); and
4. Possessing counterfeit coins, false weight or measurement and forged documents (Sections 242, 243, 259, 266 and 474).

3. Attempt: The third stage in commission of a crime is 'attempt'. It is also known as 'Preliminary Crime'. *Prof. Kenny* and *Sir Stephen* called it as 'inchoate crime' (inchoate means incomplete). An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. An intentional act which, a person does towards the commission of an offence, but which fails in its object through circumstances independent of the volition of that person is 'attempt'.

Essentials of Attempt: To constitute 'Attempt', the following essentials are to be satisfied:

1. Guilty intention to commit an offence.

2. Some act done towards the commission of the crime and
3. The act must fall short of the completed offence.

The term 'attempt' is not defined in the Indian Penal Code. Chapter XXIII (Section 511) of the Penal Code deals with 'of Attempt to Commit Offences' and provides for punishment for attempt. Under the Penal Code, attempt has been described as under:

(i) Completed offences and attempts have been dealt in the same section and same punishment is prescribed for the both.

e.g. Waging War and Attempting to Wage War (Sec.121).

(ii) In case of certain offences, attempts are described separately and separate

Punishment is prescribed for completed offences and attempt.

e.g. Section 302 describes punishment for murder and attempt to murder is punishable under Section 307.

(iii) In other cases of attempt, they are covered under Section 511, which prescribes longest term of imprisonment or fine or with both.

e.g. Punishment for theft is upto 3 years imprisonment or fine or both fine and imprisonment. Punishment for attempt to commit theft is one and half years imprisonment or with fine or with both.

An attempt to commit itself is an offence, was approved by *Mansfield* in the case of ***R. vs. Scofield* (1784) Cald 397.**

***R.V. Cheesman* 1862**: In this case, Lord Blackburn identified a key difference between preparation and attempt and said that if the actual transaction has commenced which would have ended in the crime if not interrupted there is clearly an attempt to commit the crime.

***R.V. King*, 1892:** In this case, the accused was convicted for attempting to steal from the handbag of a woman although there was nothing in the bag. Illustration (b) of Section 511 of the IPC is based on this decision.

R. vs. Linneker (1906) 2 KB 99: In this case, 'A' took a loaded revolver out of his pocket and said repeatedly that he was going to kill 'B'. His arm was seized. However, he was held guilty for an attempt.

Abhyanand Mishra vs. State of Bihar, AIR 1961 SC 1698: In this case, the accused obtained permission from Patna University to appear for M.A. in English against the forged documents stating that he was a graduate and employed in a school as a teacher. On enquiry, it was revealed that he was neither a graduate nor employed as a teacher.

The accused was convicted under Section 420/511 for offence of attempt to cheat.

As stated above, Indian Penal Code, prescribes punishment both for completed offences and also for attempt to commit certain offences. Under the Penal Code, attempt has been described under the following three ways:

1. Completed offences and attempts have been dealt in the same Section and same punishment is prescribed for the both.

   E.g.: Waging War and Attempting to Wage War (Section 121).

2. In case of certain offences, attempts are described separately and separate punishment is prescribed for completed offence and attempt.

   E.g.: Section 302 describes punishment for murder. Attempt to murder is Punishable under Section 307.

3. In other cases, of attempt, are covered under Section 511, which prescribes Longest term of imprisonment or with fine or with both.

   E.g.: Punishment for theft is upto 3 years imprisonment or fine or both fine and imprisonment. Punishment for attempt to commit theft is one and half years imprisonment or with fine or with both.

4. Accomplishment: The last stage in the commission of a crime is 'accomplishment'. If the accused succeeds in his attempt, he is guilty of the offence. In other words, the act is accomplished. Otherwise, he is guilty or attempt only.

E.g.: 'A' fires at 'B' with an intention to kill him. If 'B' dies, 'A' is guilty of murder. If 'B' is injured, 'A' is guilty of attempt to murder.

If the accused is one in commission of the crime, he may be an accomplice i.e., one, who is in some way concerned in the commission of a crime, though not as principal. A person cannot be treated as an accomplice merely because he was present, when the offence was committed and was fully aware of the person who committed it, but did not disclose it to the proper authorities. He is only an associate in crime or guilt. An accomplice is a person who has concurred in the crime and who acknowledges himself to be a criminal by being included.

LECTURE-V
THEORIES AND KINDS OF PUNISHMENT

This Lecture contains –

1. Punishment: Meaning.
2. Theories of Punishment
   - i) Deterrent Theory
   - ii) Retributive Theory
   - iii) Preventive Theory
   - iv) Reformative Theory
   - v) Expiatory Theory
3. Kinds of Punishment
   - i) Death penalty
   - ii) Life imprisonment
   - iii) Imprisonment
     - a) Rigorous and
     - b) Simple
   - iv) Forfeiture of property and
   - v) Fine.

1. PUNISHMENT: MEANING

Meaning: Punishment is a process, by which the State inflicts some pain to the person or property of a person, who is found guilty of a Crime. In other words, punishment is the suffering in person or property inflicted on the offender under the sanction of law. The principal object of punishment is the prevention of offences. Through the process of punishment, the State can:

1. Prevent (deter) the criminal not to repeat the same in future and

2. To create fear among the people not to commit such crimes/offences.

Crime is a serious evil and prevention/eradication of crime is the primary responsibility of the State. The prevention of crime or delinquency can be achieved in a number of ways and contexts. It is in this perspective that the problem of crime, criminal and punishment is drawing of the attention of the criminologists and penologists all around the world. The object of the criminal justice is to protect the society against criminals by punishing them under the existing penal law. Thus, punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. (The present topic, 'Theories and Kinds of Punishment' is also taught in other subjects viz. Jurisprudence/Legal Theory (in Administration of Justice) and Criminology and Penology.)

2. THEORIES OF PUNISHMENT

Every civilized society/State recognizes/welcomes the punishment of criminals. With the changing patterns of the modern societies, the approach of penologists towards punishment, has also undergone a radical change. The main object of punishment is prevention of crimes in the society. There are different theories of punishment. The object behind any theory of punishment is to minimise/reduce crime rate and to ensure social security. The different theories of punishment are stated below—

1. Deterrent Theory;
2. Retributive Theory;
3. Preventive Theory;
4. Reformative Theory and
5. Expiatory Theory.

1. Deterrent Theory: The term 'Deter' means "to abstain from doing an act." This theory says that punishment is a warning to others. The main object of punishment, according to this theory, is to deter (prevent) crimes. It serves as a warning to the offender not to repeat the crime in future but also to all other evil minded

persons to abstain from committing such act (crime). Despite certain defects, this theory is regarded as workable one.

2. Retributive Theory: The word 'retribute' means "to give in return." The term 'retributive' denotes "repaying or punishing suitably." This theory is based on the idea of taking revenge against the wrong doer. The basic assumption of this theory is, evil should be returned for evil. The victim (aggrieved) could inflict the same injury to the wrong doer. That is to say 'an eye for an eye, a tooth for a tooth, a limb for a limb.' The idea behind this theory is to make the offender realise the suffering/pain. This type of punishment was called 'QISAS' (KISA) in ancient Mohammedan Criminal Law. This system is prevalent in some Islamic countries. The main object of this theory is to prevent bad practice by resorting to bad practice.

This theory is subject to criticism on the ground that it is brutal and barbaric. According to this theory, crime is an offence against man (not against the public/society/community at large) and encourages personal revenges. Majority of Jurists, Criminologists, Penologists and Sociologists do not support this theory.

3. Preventive Theory: This theory is also known as 'Theory of disablement'. This theory envisages to prevent the criminal from committing crimes by keeping him away so that the society is free from the incidence of crimes. The aim of this theory is to disable the criminal. In order to prevent repetition of crimes, the offenders are punished with death, imprisonment for life, transportation of life etc. This theory is criticised on the ground that prevention of crime may be done by reforming the behaviour of criminals.

4. Reformative Theory: With the passage of time, criminal science witnessed radical change in the criminological thinking. The reformative theory seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law abiding member of the society. This theory envisages that punishment should be used as a measure to reclaim the offender and not to torture or harass him.

The object of this theory is to reform the criminals. No one is a criminal by birth. A criminal is a product of his social, economic and environmental conditions. Crime is a mental disease,

caused by different anti-social elements. Therefore, the mental cure of criminals rather than awarding punishment will serve the purpose. If the criminals are educated and trained, they can be made competent to behave well in the society. According to the modern penology, punishment is no longer Retributive or Deterrent, but Reformative or Rehabilitative. This theory also is subject to criticism on the ground that there is no punishment involved in it in the sense of some sort of pain and hence, it cannot be regarded as punishment in true sense. The authors of an American study also criticized reformist ideology saying, "it never commended more than lip service from most of its more powerful adherents. Prison administrators who embraced the rehabilitative ideal, have done so because it increased their power over inmates. "The Reformative Theory has been proved to be successful in case of young offenders.

5. Expiatory Theory: The word 'expiate' means "to make complete atonement for, or to make satisfaction or reparation for." This theory is based on morals. *Hegal* and *Kohler* are the main supporters of this theory. According to this theory, expiation or repentance by offender itself is a punishment. If the offender expiates or repents, he must be forgiven. This type of punishment was prevalent in ancient Indian Criminal Law. Expiations were performed by way of uttering manthras, fasting, self-immolation, or even burning oneself to death.

None of the above theories can be adopted as sole standard of punishment for the perfect Penal Code. The perfect system of criminal justice is the result of a compromise between the underlying principles of all the theories.

3. KINDS OF PUNISHMENT

Before passing of the Indian Penal Code, 1860 Mohammedan Criminal Law was applied both for Mohammedans and Hindus. There were so many defects in the Mohammedan Criminal Law viz., defects in the mode of punishment, principles of Law of Evidence etc. There were five kinds of punishments in Mohammedan Criminal Law, namely:

i) Kisa (Qisas);

ii) Diya (Blood money);

iii) Hadd (Fixed punishment);

iv) Tazeer (Discretionary punishment) and

v) Siyasat (Punishment by king in the interest of public).

i) Kisa: It meant retaliation. The injured/victim or his relatives could inflict similar punishment to the offender. E.g.: Life for life, limb for limb. It was applied in grave offences like murder.

ii) Diya: Diya or Diyat meant 'blood money'. The offender could get exemption from criminal liability by making payment to the injured/victim or his/her heir. In case of murder, the heir of the deceased had an option to accept diya (exempting the offender from punishment by accepting money) or kisa (to inflict similar punishment to the offender).

iii) Hadd: Hadd means 'boundary or limit'. In case of hadd, the punishment was fixed and the Judge did not have a discretionary power to award more or less punishment fixed. E.g.: The punishment for 'Zina' (illicit intercourse) was death by stonning, for theft, amputation of hands.

iv) Tazeer: Tazeer meant 'discretionary punishment'. The Judge had complete discretion to award punishment to the offender. E.g.: Sodomy, forgery of deeds etc.

v) Siyasat: The king, in the interest of the public could award punishment to the offenders.

The above punishments were reformed later.

Punishments under the Indian Penal Code: Section 53 of the Indian Penal Code, 1860 prescribes five kinds of punishments as follows:

1. Death Penalty;
2. Life Imprisonment;
3. Imprisonment;
   a) Rigorous and
   b) Simple.
4. Forfeiture of property and
5. Fine.

1. Death Penalty or Capital Punishment: It is the most serious nature of punishment. Some countries abolished it. It is awarded in India in certain exceptional cases. The offences which are punishable with death sentence under the Indian Penal Code include:

1. Waging War against the Government of India (Sec. 121).
2. Abetting mutiny actually committed (Sec. 132).
3. Giving or fabricating false evidence upon which an innocent person suffers death (Sec. 194).
4. Murder (Sec. 302)
5. Abetment of suicide of a minor or an insane or an intoxicated person (Sec. 305).
6. Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (Sec. 307).
7. Punishment for causing death or resulting in persistent vegetative state of victim (Sec. 376A)
8. Punishment for repeat offenders (previously convicted of an offence punishable under Section 376 or Section 376A or Section 376D (Sec. 376E) and
9. Dacoity accompanied with murder (Sec. 396).

The law confers on the Judge wide discretionary power in the matter of passing a sentence. However, under Section 303 I.P.C. the Judge has no such discretionary power since Section 303 prescribes capital/death sentence compulsorily in case of a life imprisonment convict, who is found guilty of committing murder, while undergoing the sentence of imprisonment for life. Therefore, Section 303 was struck down as unconstitutional by the Supreme Court in ***Mithu vs. State of Punjab,*** **(AIR 1983 SC 473).**

2. Imprisonment for Life: The Code of Criminal Procedure (Amendment) Act, 1955 (No.26 of 1955) substituted the words "imprisonment for life" for the words "transportation for life". It denotes 'rigorous imprisonment for life.' It means imprisonment for the remaining period of life (i.e., till death). But in practice, it is not so. In India, it is 14 years and 20 years under Section

57 I.P.C. However, the life convict is not entitled to automatic release on completion of fourteen years imprisonment unless the Government passes an order remitting the balance of his sentence. Section 55 of the Penal Code empowers the appropriate Government to commute the period of life imprisonment.

The sentence of imprisonment for life is provided in about fifty offences under the IPC as given below:

1. Waging war (alternative with death (Sec. 121).
2. Conspiracy against the State (Sec. 121A).
3. Collection of arms etc., with the intention of waging war against the Government of India (Sec. 122).
4. Sedition (Sec. 124A).
5. Waging war against any Asiatic Power in alliance with the Government of India (Sec. 125).
6. Public servant allowing prisoner of State of war in his custody to escape (Sec. 128).
7. Aiding etc., of such escaped prisoner (Sec. 130).
8. Abetment of mutiny (Sec. 131).
9. Abetment of mutiny if it is committed in consequence (alternative with death) (Sec. 132).
10. Perjury in a capital crime (Sec. 194).
11. Perjury in a crime punishable with transportation (Sec. 195).
12. Resistance to apprehension of a convict sentenced to death (Sec. 225).
13. Omission to apprehend or sufferance of escape on the part of public servant in certain cases (Sec. 225A).
14. Counterfeiting Coin (Sec. 232).
15. Import or export of counterfeit coin (Sec. 238).
16. Counterfeiting Government Stamps (Sec. 255).
17. Murder (Alternative with death) (Sec. 302).
18. Culpable homicide (Sec. 304).
19. Abetment of suicide by a minor or insane person (Sec. 305).

20. Attempted murder with hurt (Sec. 307).
21 Being a thug (Sec. 311).
22. Causing miscarriage without woman's consent (Sec. 313).
23. Causing miscarriage without woman's consent, if the woman dies (Sec. 314).
24. Causing grievous hurt by a dangerous weapon (Sec.326)
25. Causing grievous hurt for extortion (Sec. 329).
26. Kidnapping and abduction in order to murder (Sec. 364).
27. Trade in slaves (Sec. 371).
28. Punishment for Rape (Sec. 376).
29. Punishment for causing death or resulting in persistent vegetative state of victim (Sec. 376A).
29a Punishment for rape on woman under twelve years of age (Sec. 376AB)
30. Gang rape (Sec. 376D).
30a. Punishment for gang rape on woman under sixteen years of age (Sec. 376DA)
30b. Punishment for gang rape on woman under twelve years of age (Sec. 376DB)
31. Punishment for repeated offenders (previously convicted of an offence punishable under Section 376 or Section 376A or Section 376D (Sec. 376E).
32. Unnatural offence (Sec. 377).
33. Extortion by threat of accusation of offence (Sec. 388).
34. Intimidation by threat of accusation of offence (Sec. 389).
35. Robbery with hurt (Sec. 394).
36. Murder in dacoity (alternative with death) (Sec. 396).
37. Belonging to a dacoit gang (Sec. 400).
38. Criminal breach of trust by public servant, banker, merchant, agent, etc. (Sec. 409).
39. Receiving property stolen in dacoity (Sec. 412).
40. Trade in stolen property (Sec. 413).
41. Mischief by fire to destroy a house etc. (Sec. 436).
42. Mischief by fire with intention to destroy vessels etc. (Sec. 437).
43. House-trespass to commit an offence punishable with death (Sec. 459).
44. Grievous hurt caused whilst committing lurking house-trespass (Sec. 459).

45. Death or grievous hurt by a confederate concerned in house-breaking (Sec. 460).
46. Forgery of a valuable security, etc. (Sec. 467).
47. Manufacturing seal with intent to commit forgery (Sec. 472).
48. Possession of a forged security etc. (Sec. 474).
49. Counterfeiting device or mark for forgery etc. (Sec. 475).
50. Fraudulent tampering of a will etc. (Sec. 477).
51. Certain attempts to commit offences (Sec. 511).

3. Imprisonment: It means confinement or total deprivation of personal liberty. It is of two kinds namely,

i) Rigorous Imprisonment and

ii) Simple Imprisonment.

i) Rigorous Imprisonment: In the case of rigorous imprisonment the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting fire-wood, mowing grass etc. The maximum imprisonment that can be awarded for an offence is fourteen years (Section 57 of the IPC). The lowest term actually named for a given offence is twenty-four hours (Sec. 510 of the IPC), but the minimum is unlimited. The following offences mentioned in the IPC are punishable also by rigorous imprisonment:

(i) Personating a public servant (Sec. 170)

(ii) Punishment for bribery (Sec. 171E)

(iii) False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation (Sec. 181)

(iv) Punishment for false evidence (Sec. 193)

(v) Giving false information respecting an offence committed (Sec. 203)

(vi) Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture (Sec. 218)

(vii) Causing miscarriage (Sec. 312)

(viii) Punishment for voluntarily causing hurt (Sec. 323).

ii) Simple Imprisonment: In case of simple imprisonment, the offender is confined to jail and is not put to any kind of work. The following offences are punishable with simple imprisonment only:

a) Public servant unlawfully engaging in trade; or unlawfully buying or bidding for property (Sections 168, 169).

b) A person absconding to avoid service of summons or other proceedings from a public servant or preventing service of summons or other proceedings, or preventing publication thereof; or not attending in obedience to an order from a public servant (Sections 172, 173, 174).

c) Intentional omission to produce a document to a public servant by a person legally bound to produce such document; or intentional omission to give notice or information to a public servant by a person legally bound to give; or intentional omission to assist a public servant when bound by law to give assistance (Sections 175, 176, 187).

d) Refusing oath when duly required to take oath by a public servant; or refusing to answer a public servant authorised to question or refusing to sign any statement made by a person himself before a public servant (Sections 178, 179, 180).

e) Escape from confinement negligently suffered by a public servant; or negligent omission to apprehend, or negligent sufferance of escape, on the part of a public servant in cases not otherwise provided for (Sections 223, 225A).

f) Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (Sec. 228).

g) Continuance of nuisance after injunction to discontinue (Sec. 291)

h) Wrongful restraint (Sec. 341).

i) Defamation: printing or selling defamatory mater known to be so (Sections 500, 501, 502).

j) Uttering any word, or making any sound or gesture, with an intention to insult the modesty of a woman (Sec. 509).

k) Misconduct in a public place by a drunken person (Sec. 510).

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple:

As per Section 60 of the IPC, in every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

4. Forfeiture of Property: Forfeiture of property means taking away the property of the criminal by the State as punishment. The punishment of absolute forfeiture of all property of the offenders is now abolished. Sections 61 and 62 of the Penal Code dealing with such forfeiture are repealed by Act XVI of 1921.

There are the following offences in which the offenders are liable to forfeiture of specific property:

a) Committing depredation on territories of power at peace with the Government of India (Sec. 126);

b) Receiving property taken by war or depredation (Sec. 127); and

c) The property purchased or bid by public servant unlawfully (Sec. 169).

5. Fine: Fine is derived from *'finis'*, and is so called because its payment puts an end to the offence for which it is imposed. A fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanour. 'Fine' is a sum of money ordered by the Court in exercise of criminal jurisdiction to pay as a punishment for an offence. Fine may be sole punishment or alternative or it may be in addition to the imprisonment. Fine is the only punishment in the following cases:

a) A person in-charge of a merchant vessel, negligently allowing a deserter from the Army or Navy or Air Force to obtain concealment in such vessel, is liable to a fine not exceeding Rs.500/- (Sec. 137).

b) The owner or occupier of land on which a riot is committed or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with a fine not exceeding Rs.1,000/- (Sec. 154).

c) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (Sec. 155).

d) The agent or manager of such person under like circumstances (Sec. 156).

e) False statements in connection with an election (Sec. 171G).

f) Illegal payments in connection with an election (Sec. 171H).

g) Failure to keep election accounts (Sec. 171 I).

h) Voluntarily vitiating the atmosphere so as to render it noxious to the public health is punishable with a fine upto Rs.500/- (Sec. 278).

i) Obstructing a public way or line of navigation is punishable with a fine not exceeding Rs.200/- (Sec. 283).

j) Committing of a public nuisance not otherwise punishable, is punishable with a fine not exceeding Rs.200/- (Sec. 290).

k) Publication of a proposal regarding a lottery, is punishable with a fine not exceeding Rs.1,000/- (Sec. 294A).

LECTURE-VI

JOINT LIABILITY

(Common Intention and Common Object)

The law relating to group liability (also termed as joint liability, constructive liability or vicarious liability) has been elaborately dealt with in Sections 34 to 38, 120A, 121A, 149, 396 and 460 of the Indian Penal Code, 1860. These provisions may be broadly classified into five categories as stated below—

1) Where the criminal act is done with the common intention of the group (Sections 34 to 38);

2) Where the offence is committed with the common object of an unlawful assembly (Sec. 149);

3) Where the persons are charged of a criminal conspiracy (Sections 120A, 121A);

4) Where five or more persons conjointly in the commission of dacoity commit murder (Sec. 396); and

5) Where persons are jointly concerned in committing the offence of lurking house-trespass or house-breaking by night (Sec. 460).

When two or more persons commit a crime jointly, each one of them is equally liable as if he alone has committed such offence. Their liability is called Joint Liability or Constructive Joint Liability. The liability is joint and constructive in the sense, all of them are equally liable and are awarded the same punishment.

E.g.: A, B and C jointly went to D's house to kill him. In fact, B alone fired at D and killed him. However, A, B and C are equally liable and the same punishment is awarded to all of them. Sections 34 to 38, 114, 149, 396 and 460 of the Indian Penal Code deal with joint liability.

This lecture deals in particular:

I. Common Intention (Sec. 34) and

II. Common Object (Sec. 149).

I. COMMON INTENTION (SECTION 34)

Section 34 of the Indian Penal Code speaks about 'Common Intention'. According to Section 34 of the Penal Code, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it is done by him alone. The liability is called "joint liability or constructive liability." It is also known as 'Constructive Criminality'.

Principle: Section 34 of the Penal Code creates no specific offence. It only lays down a rule of evidence that if two or more persons commit a crime in furtherance of a common intention, each of them will be liable jointly on the principle of group (or joint) liability. Thus, if two or more persons commit an illegal act conjointly, it is the same as if each of them had done the act separately and each will be liable constructively for the act in the same manner as if it were done by him alone.

In 1870 by the IPC (Amendment) Act 27 of 1870 Section 34 was amended by the insertion of the words 'in furtherance of the common intention of all', so as to make the object of the Section clear. The original Section 34 was as follows:

"When a criminal act is done by several persons, each of such person is liable for that act in the same manner as if the act was done by him alone."

Section 34 incorporates the common sense principle of joint liability laid down in the case of

***Reg. v. Cruse*:** In this case, a police constable along with his assistants went to A's house in order to arrest him. On seeing the police constable, B, C, D and others came out of the house, gave him a blow and drove off the constable and his assistants. The Court evolved the doctrine of joint liability and held that each of the members of the group B, C and D were equally responsible for the blow, whether one actually struck it or not.

Ingredients of Section 34: To constitute joint liability under Section 34, the following ingredients are to be satisfied—

1. There must be (two or more) several persons.
2. They must have a common intention to commit the offence.

3. The criminal act must have been done in furtherance of the common intention.

4. Participation in the action by all the accused.

1. Several (Two or More) Persons: To constitute Section 34, there must be several or atleast two offenders. It is necessary that each one of them has consented to join the crime. Active participation of each and every offender is not necessary.

2. Common Intention: 'Intention' means "the desire of doing an act." If two or more persons desirous of doing an act by prior meeting or pre-arranged plan, it is called 'Common Intention'. The expression 'common intention' has been given various meanings which are as follows:

(1) Common intention implies a pre-arranged plan, prior meeting of minds, prior consultation in between all the persons constituting the group.

(2) Common intention means a desire to commit a criminal act without any contemplation of the consequence.

(3) Common intention means the *mens rea* necessary to constitute the offence that has been committed.

(4) It also means evil intent to commit some criminal act, but not necessarily the same offence which is committed.

(5) According to some, it cannot be given any such meaning which we can apply everywhere, therefore its exact meaning depends upon the circumstances of each case.

E.g.: 'A' and 'B' planned to kill 'C' in his house. Here, the intention of 'A' and 'B' is said to be common intention. Suppose 'A' and 'B' independently, without any prior planning went to 'C's house to kill him, their intention is not common. Hence, the liability of 'A' and 'B' is not joint, but independent.

To attract Section 34 of IPC, the accused person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road to facilitate their escape, but he must be physically present at the scene of the

occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually being committed. It is essential that the accused join the actual 'doing' of the act and not merely in planning its preparation.

The application of Section 34 is well illustrated in the following leading case:

***Barendra Kumar Ghosh vs. Emperor*, 1925 I.L.R. Cal. Vol. 542, p. 197** (Popularly known as Post-Master Murder Case): Barendra Kumar, along with two of his companions went to a Post Office for committing robbery. One of his companions opened fire, causing the death of the Post Master. The two others ran way without robbing the money. But, Barendra Kumar was caught with a pistol. He was tried for murder under Section 302 read with Section 34 I.P.C. Barendra Kumar denied the charge on the ground that he did open the fire and he had no intention to kill the Post Master. His plea was denied and was held guilty of murder.

Rishi Deo Pandey v. State of Uttar Pradesh: In this case, two accused A and B, who were brothers, were seen standing near the cot of the victim who was sleeping. A, armed with a gandasa and B, with a lathi, when a hue and cry was raised the two ran together. The medical evidence showed that the deceased died of an incised wound on the neck, which was necessarily fatal. The Supreme Court held that the Court of Session was justified in coming to the conclusion that B shared with A the common intention to cause death and there was no reason to interfere with the conviction under Sections 302 read with Section 34 IPC.

Common Intention differs from the same/similar intention: The relevant leading case on this point is:

Mahaboob Shah vs. Emperor, AIR 1945 PC 118 (Indus River Case):

Facts: In this case, Allah Dad, the deceased, along with his friend Hamidullah went in a boat for collecting reeds on the bank of the river Indus. Mahaboob Shah warned/resisted Allah Dad and his companion not to cut/collect the reeds as the land belonged to him. Allah Dad did not care a pin to his words and collected 16 bundles of reed and loaded it in the boat. Mahaboob Shah's nephew Kasim Shah asked them to return the reeds collected from

their land. As Allah Dad refused, Kasim Shah obstructed the boat and pushed Allah Dad. Then Allah Dad, with a baboo pole struck Kasim Shah. Kasim Shah shouted for help. On hearing the shouting, Wali Shah and his son Mahaboob Shah reached there with loaded guns in their hands. Wali Shah fired at Allah Dad and Mahaboob Shah fired at Hamidullah. Allah Dad died and Hamidullah was injured. Wali Shah absconded. But, Mahaboob Shah and Kasim Shah were prosecuted for the murder of Allah Dad.

Judgment: The Sessions Judge convicted Mahaboob Shah with death sentence under Section 302 read with Section 34 I.P.C. Kasim Shah was sentenced to 5 years rigorous imprisonment under Section 307 read with Section 34 I.P.C. On appeal, the Lahore High Court, acquitted Kasim Shah on the ground that he had no common intention to kill. However, the Court confirmed the conviction of Mahaboob Shah under Section 302/34 I.P.C., on the ground that the common intention came into being when he (Mahaboob Shah) opened fire along with the other accused Wali Shah (absconding) simultaneously in the same direction. Mahaboob Shah preferred an appeal before the Privy Council. The Privy Council allowed the appeal and set aside the sentence/conviction.

Principles: The Privy Council reversed the decision of the Lahore High Court applying the following principles:

1. To invoke the Section 34 I.P.C. successfully, it must be shown that the criminal act is done in furtherance of the common intention of all. It should be proved that the act was done pursuant to the pre-arranged plan.
2. There was no evidence, direct or circumstantial that the accused/appellant (Mahaboob Shah) must have been acting in concert with the other accused, Wali Shah (absconding) in pursuance of a concerted plan.
3. There was no evidence that the appellant and Wali Shah entered into a pre-meditated concert to bring about the murder of Allah Dad.
4. The essence of the joint liability is to be found in the existence of a common intention; and

   The inference of common intention within the meaning of the term in Section 34 should never be reached unless

it is a necessary inference deducible from the circumstances of the case. Same or similar intention must not be confused with common intention.

Again, common intention that developed on the spur of the moment has to be viewed against the specific circumstances of the case.

This principle came to be considered in

Dukhmochan Pandey v. State of Bihar, **AIR 1998 SC 40 = 1998 Cr.LJ. 66.** In this case the complainant had sent about 20 labourers to his field for transplanting paddy. At about noon of that day, the accused party numbering about 200 people, assembled as a mob, armed with various deadly weapons came to the field and asked the labourers to stop work. When the complainant objected to this, two accused directed the mob to kill the labourers. Soon thereafter, the two accused fired from their respective guns into the group of labourers. Thereafter, the mob also started assaulting the labourers with their weapons. The village which had been tense for some time had an executive magistrate and a police party stationed in a different part of the village. As the official and the police party came to the spot on hearing about the incident, the accused fled from the spot. Two persons died in the incident. The death was established to have been caused by shock and haemorrhage caused by injuries inflicted with sharp pointed weapons.

Kripal Singh v. State of Uttar Pradesh: In this case, the Supreme Court held that a common intention may develop on the spot after the offenders have gathered there. A previous plan is not necessary. Common intention can be inferred from the conduct of the accused and the circumstances of the case. In the present case three accused, A, B and C were charged under Sections 302 read with Section 34 of the Penal Code for murder.

There was a long-standing dispute over land between the accused and the deceased X. One morning the accused, while working in their field saw two labourers going to the field of X to work there. The accused shouted at them not to do so, but the labourers paid no heed and walked on. Thereupon the accused rushed at them and began belabouring them with the handles of their spears. Meanwhile X arrived and intervened and the accused attacked him. First B and C attacked him on his legs and he fell

down. Then A stabbed X in the head with his spear. He then put his leg on X's chest to extract the spear blade which had stuck in X's jaw. The blow had gone through the skull and injured the brain, so that X died on the spot.

So far as A was concerned, the court held that the blow was given with deliberate intention on the head of a fallen and helpless man lying on the ground, and was given with such force as to penetrate the skull with a sharp and pointed instrument. Accordingly, conviction under Section 302, IPC and sentence of death were maintained.

As regards B and C, the court observed that, in view of the circumstances of the case, it could not be said that what developed between all the accused on the spot was a common intention to kill X. The only common intention that could be attributed to them was the intention to beat X with weapons which were likely to produce grievous injuries. Therefore, they were not guilty under Sections 302/34. But even though the injuries they themselves had caused were simple, they were guilty under Sections 326/34 because of the common intention of all to attack X with sharp cutting weapons.

3. In Furtherance of Common Intention: The expression in 'furtherance of' means 'action of helping forward'. The offence is committed in accordance with the common intention. In other words, it means putting the common intention in operation.

4. Participation in Action: To constitute Section 34, the persons involved in the offence must have been consented to it. Their physical presence coupled with actual participation is necessary. He need not involve in commission of the offence. If he joins the other offenders and simply stands at the door, he is liable.

Common intention can be proved from the circumstances of a case which illuminate the state of mind of the accused.

***Khacheru Singh v. State of Uttar Pradesh*:** In this case, several persons attacked a man with lathis when he was passing through a field. The man eluded them and they gave chase; on overtaking him they once again attacked him. Held, these facts were sufficient to prove that the accused had been actuated with the common intention to assault the victim. Conviction under Section 326 read with Section 34 was sustained.

II. COMMON OBJECT (SECTION 149)

Meaning: Like Common Intention, Common Object is another instance of Constructive Joint Liability. Section 149 does not create a new offence as in Sections 34 and 120B, IPC. It incorporates the principle of vicarious liability and holds a person liable for an offence, which he might not have actually committed, by reason of his being a member of an unlawful assembly. Section 149 provides that every member of an unlawful assembly having a common object, is responsible for acts committed by any other member of that assembly, and is guilty of the substantive offence and hence punishable for that offence.

According to Section 149 of the Indian Penal Code, "when five or more persons commit a crime in prosecution of common object, each member of such group will be liable for that act in the same manner as if it was done by him alone."

Section 149 of the Penal Code deals with the joint liability of the members of an unlawful assembly. For application of Section 149, there must be an unlawful assembly as defined under Section 141 of the Penal Code.

To constitute unlawful assembly under Section 141:

i) There must be an assembly of not less than five persons.

ii) They must have common object in committing the offence.

iii) The object must be in the nature as specified in items 1 to 5 namely:

1. Overawing the Government by using criminal force or show of criminal force;
2. Resisting the execution of law or legal process;
3. To commit any mischief, criminal trespass or other offence;
4. Forcible possession or dispossession of property and
5. Illegal compulsion.

For the application of this Section, it is essential to prove that there were at least five persons sharing the common object. The presence of five or more persons must be unquestionably proved although it may happen that some of them are unidentifiable or that their identity was doubtful. In such cases even less than five persons may be convicted. But if it is doubtful that there were

at least five persons no conviction is possible under this Section. Once it is shown that an offence has been committed by some members of an unlawful assembly in prosecution of the common object then whether the principal offender has been convicted for that 'offence' or not, the other members may be punished provided they are found to have had the necessary intention or knowledge.

Any member of the unlawful assembly with any one of the above objects, commits an offence, all the members of such assembly are jointly liable for that offence. Thus, the essential element of Section 149 is the commission of an offence by any member of an unlawful assembly. The second essential part is that the offence must be committed in prosecution of the common object of the unlawful assembly, or must be such as members of that assembly knew that they are likely to be committed in prosecution of common object. There must be a nexus between the common object and the offence committed.

Queen vs Sahib Ali, **(11 B.L.R. 347):** It was held in this case that, to constitute liability under Section 149, all the members must know the common object of that assembly. Any sudden and unpremeditated act done by member of an unlawful assembly would not render all other members liable unless they knew that the offence would be committed.

Musa Khan vs. State of Maharashtra **(1977) 1 SCC 733: 1977 SC (Cri) 164:** In this case, the Supreme Court held that "mere presence/innocent presence in an assembly of persons does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly."

T. Rami Reddy and others vs. State **(1988) (6) SCC 564:** In this case, the accused Rami Reddy and others formed into an unlawful assembly with an object to kill G. Mohan Reddy. Armed with deadly weapons, the accused broke open the doors of the house of Mohan Reddy and dragged him out. Mohan Reddy was beaten to death by all the accused with sticks and other deadly weapons. The trial Court convicted the accused under Section 302 read with Section 149 I.P.C. The conviction was confirmed by the High Court. On appeal, the Supreme Court upheld the conviction.

State of A.P. vs. Veddula Veera Reddy and others, **(1998) 4 SCC 145:** In this case, the accused Veera Reddy along with

four others formed into an unlawful assembly and attacked his brother in his house with deadly weapons and killed him. All the five accused were convicted under Section 304/149. On appeal, the High Court altered the conviction from Section 302/149 to 304 Part-I I.P.C. The State preferred an appeal before the Supreme Court. The Supreme Court set aside the altered decision of the High Court and upheld the conviction by the trial Court (Dist. Sessions Judge, Guntur).

***Mahmood v. State of U.P.*, 2007 (14) SCC 16 = AIR 2008 SC 515.** In this case, it was held that once it is established that a person was a member of unlawful assembly, prosecution need not establish any specific overt act to any of the accused for fastening of liability with the aid of Section 149, I.P.C.

Ram Dular Rai v. State of Bihar, In this case, it was held that mere presence in unlawful assembly cannot render a person liable unless he was actuated by common object and that object is one of those set out in Section 141 of IPC. Common object is different from a 'common intention' as it does not require prior concert and prior meeting of minds before attack.

Mangal Singh and Others v. State of Bihar, The accused party in the instant case fired at the deceased party after exchange of words. Many members except two of accused party were armed with fire arms. Those two members who were unarmed had not committed any overt act. Eye-witnesses did not say that any exhortation was given by them. Therefore these two cannot be said to have shared common object of assembly and as such they cannot be convicted. The Supreme Court held the conviction of other members of the accused party proper.

***Ramesh and Others v. State of Haryana*, AIR 2011 SC 169 = 2011 Cr.LJ 80.** In this case, the appellants, who were variously armed including firearms assembled at one place and thereafter came to place of occurrence and started assault together. When deceased protested, one of the members of unlawful assembly shot him dead and some of them caused injury by fire arms, *gandasa, lathi* etc. to others. All of them had come and left place of occurrences together. It was held that appellants are members of unlawful assembly and offences have been committed in pursuance of common object. Hence each of them was liable for offence committed by any other member of assembly. They are guilty with the aid of Section 149 I.P.C.

Distinction between Common Intention (Section 34) and Common Object (Section 149)

Common Intention (Sec. 34)	Common Object (Sec. 149)
1. The number of offenders is two or more.	1. The number of offenders is five or more.
2. The intention under Sec. 34 may be of any intention.	2. The object under Sec. 149 must be one of the objects mentioned under Sec. 141.
3. It does not create any specific offence.	3. It creates a specific offence.
4. Prior meeting of minds is necessary.	4. Prior meeting of minds is not necessary.
5. Participation in action is necessary.	5. Mere membership in unlawful assembly is sufficient to make the person liable.
6. It is joint liability.	6. It is constructive liability.
7. Only offence committed in furtherance of common intention is punishable.	7. Members of unlawful assembly are not only liable to act done in prosecution of common intention to be done in prosecution of the unlawful object, but its consequent offences.

LECTURE-VII

ABETMENT

(Sections 107-120)

This lecture covers—

1. Introduction.
2. Classification of Criminals
   - i) Principal in the First Degree
   - ii) Principal in the Second Degree
   - iii) Accessory before the Fact and
   - iv) Accessory after the Fact
3. Abetment: Meaning and Definition
   - i) Abetment by Instigation
   - ii) Abetment by Conspiracy and
   - iii) Abetment by Intentional Aiding
4. Abettor (Section 108)
5. Abetment in India of offences outside India and
6. Abetment by various/different means and punishments.

1. Introduction: In certain cases, a person, who does not actually commit a crime may help to bring it about and thereby be guilty of the offence of abetment. Where one person is instrumental for the commission of an offence by another, it is said to be abetment.

E.g.: 'A' encourages or instigates or provokes or engages 'B' to commit murder of 'C', is an instance of abetment. In other words, 'A' abets 'B' to commit murder. Sections 107-120 (including Section 108A, added by Act 4 of 1898, Sec.3) of the Penal Code lay down the provisions relating to abetment.

Section 107 defines abetment. Section 108 explains, who is an abettor? Section 108A (added by Act 4 of 1898, Sec. 3) deals with abetment in India for offence committed outside India. Section 109 deals with punishment of abetment if the act abetted

is committed in consequence and where no express provision is made for its punishment. Section 110 deals with punishment of abetment if person abetted does act with different intention from that of abettor. Section 111 provides for liability of abettor when one act abetted and different act done. Section 112 speaks about abettor when liable to cumulative punishment for act abetted and for act done. Section 113 deals with liability of abettor for an effect caused by the act abetted different from that intended by the abettor. Section 114 Abettor present when offence is committed. Section 115 provides for abetment of offence punishable with death or imprisonment for life if offence not committed if act causing harm be done in consequence. Section 116 deals with abetment of offence punishable with imprisonment if offence be not committed, if abettor or person abetted be a public servant whose duty it is to prevent offence. Section 117 provides for abetting commission of offence by the public or by more than ten persons. Section 118 deals with concealing design to commit offence punishable with death or imprisonment for life. Section 119 speaks about public servant concealing design to commit offence which it is his duty to prevent. Section 120 deals with concealing design to commit offence punishable with imprisonment.

2. Classification of Criminals: When two or more persons are involved in commission of a crime their respective share in commission of the crime differs from one another. For the purpose of imposing liability, English law classified the criminals under four heads, namely:

i) Principal in the first degree;

ii) Principal in the second degree;

iii) Accessory before the fact and

iv) Accessory after the fact.

i) Principal in the First Degree: He is the person by whom the act is done. He commits the crime is committed through an innocent agent, then the person who instigates the offence is the offender.

E.g.: A doctor administers poison to a patient through an innocent nurse, saying that it is a medicine. Here, the doctor is the principal in the first degree.

ii) Principal in the Second Degree: A person who aids or abets another in commission of a crime, is called the principal in the second degree.

E.g.: If a person aids robbery by giving signal from a distance, he is a principal in the second degree. Similarly, if a married woman insists/encourages her husband to marry again, is a principal in the second degree for commission of the offence of the 'bigamy'.

iii) Accessory before the Fact: Accessory is a person who gives advice to the principal to commit the crime.

E.g.: 'A' directs 'B' to poison 'C'. But 'B' kills 'C' by shooting. 'A' is accessory before the fact to 'C's murder (even though 'C' is not killed as directed). Suppose 'B' rapes 'C's wife, 'A' is not accessory before the fact/crime.

iv) Accessory after the Fact: He is a person, who assists the criminal with a view to save him. In other words, a person who receives or protects or maintains a known criminal or helps the criminal to escape after the crime, is an accessory after the fact/crime.

3. Abetment: Meaning and Definition: A person may commit an offence in conjunction with other person/persons. In such a case, the degree of liability for commission of the crime varies from one person to another.

'To abet' means "to help in doing something". 'To abet' means "to instigate or encourage the commission of a crime." The word 'abet' includes 'knowledge of wrongful purpose." If an offence is committed on the advice or instigation of another, it is called 'Abetment'. The person, who abets is called 'Abettor'. Abetment of an offence is punishable both in English Law and Indian Law. Section 107 I.P.C. defines abetment and Section 108 explains who is an abettor.

In Corpus Juris Secundum, the meaning of the word 'abet' has been given as under:

"To abet has been defined as meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage, counsel, induce, or assist, to encourage."

Section 107: Section 107 of the Penal Code defines 'abetment' as "a person who abets the doing of a thing by another or instigates any person to do that thing or engages with one or more persons in conspiracy for doing that thing for an act or illegal omission in pursuance of conspiracy, in order to doing of that act."

Section 107 I.P.C. reads as follows:

Firstly – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, doing of that thing.

Thus, according to Section 107, abetment may take place under the following three methods:

i) Abetment by Instigation;

ii) Abetment by Conspiracy and

iii) Abetment by Intentional Aiding.

i) Abetment by Instigation: The word 'instigate' means urge forward or to provoke or to incite, urge or encourage to do an act. An inciter is one, who counsels, commands or advises the commission of a crime. A person is said to instigate another, when he actively suggests or stimulates him to do an act. Mere gestures directing a person to do an act amount to abetment.

The word 'instigate' as used in Section 107 of the code cannot be restricted to the use of actual words. It has to be given wider meaning commensurate with common experience of life. Advice *per se* does not necessarily amount to instigation. Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. Advice amounts to instigation only, if it was meant actively to suggest or stimulate the commission of an offence.

Abetment by instigate takes place in different forms as detailed below—

a) One form of instigation is that actively suggesting or stimulating another to the act by any means of language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. A mere association of the accused with the perpetrator of an offence does not make him an abettor unless it is proved that he instigated or had intention either in aiding or in commission of the offence.

b) Another form of instigation is that of approval of an act. While generally passive or unresponsive approval may not necessarily be considered to be instigation, there are specific instances when approval has been held to be instigation.

c) Another form of instigation is a wilful misrepresentation or a wilful concealment of a material fact which one is bound to have been disclosed thereby causing or procuring a thing to be done. Instigation by wilful concealment refers to a case where a person who is obligated to disclose a fact keeps mum and thereby abets the commission of the act. The illustration appended to the explanation 1 reveals instigation by wilful misrepresentation.

d) Instigation as a form of abetment is an essential consideration in cases involving death of young brides or women within seven years after marriage as a consequence of dowry harassment.

***R. vs. Mohit Pandey*, AIR 1959 SC 673:** In this case, silent approval producing an effect of incitement, was held to be an abetment by instigation. In this case, a woman prepared herself to be Sati. Certain people followed her to cremation ground and stood by her funeral pyre. They were held guilty of abetment by instigation. Further, request to do a thing may amount to abetment by instigation.

E.g.: 'A' offers bribe to 'B', a public servant as a reward for showing some favour in the exercise of B's official functions.

'B' refused to accept the bribe. 'A' is guilty of abetment by instigation and is punishable (under Section 116).

***Reg. vs. De Kromme*, 17 Cox. 492:** In this case, a person who had offered a bribe to a servant to sell his master's goods at less than their value was held guilty of incitement to an offence.

***Tej Singh v. State of Rajasthan* [AIR 1958 Raj 169]:** In this case, a widow immolates herself in the funeral pyre of her husband. When members of the funeral procession of her husband applauded her resolve by shouting *Sati Mata ki Jai,* they were held to have instigated her to commit *sati* as their approval of the woman's act by participation in the procession give her encouragement to commit suicide.

ii) Abetment by Conspiracy: 'Conspiracy' means "an agreement of two or more persons to do an illegal act or a legal act by an illegal means." To constitute abetment by conspiracy, two or more persons must conspire and one of the persons must be the person abetting. The act must be an act committed in pursuance of the conspiracy and a probable consequence of it.

For instance A, a servant enters into an agreement with thieves to keep the doors of his master's house open in the night so that they might commit theft. A, according to the agreed plan, keeps the doors open and the thieves take away his master's property. A is guilty of abetment by conspiracy for the offence of theft.

To prove the charge of abetment by conspiracy, the prosecution is required to prove that the abettor had instigated the doing of a particular thing or engaged with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aided by an act or illegal omission, doing of that thing.

No person can be convicted for conspiracy if the charge against all other conspirators has failed, or if other alleged conspirators are acquitted. In case of a charge of conspiracy against several persons, it would not be necessary for the prosecution to prove, before it can be held established that each conspirator knew and had personal communication with all the rest, because some of them might be intermediaries.

Haradhan Chakrabarty v. Union of India, **AIR 1990 SC 1210 = 1990 Cr.LJ. 1246:** In this case, the petitioner was charged with offence of abetment by conspiracy of commission of offence of theft by his officer, Major Trilokchand and none others. It was alleged that Major Trilokchand committed theft of 250 wheel drums and nine others including the appellant abetted the offence. Major Trilokchand was found guilty but eight abettors were acquitted by the Court martial. Later on Major Trilokchand was also acquitted by the High Court in appeal and the special leave petition filed by the Union of India against the order of the High Court was also dismissed. Thereafter, Major Trilokchand was reinstated in the service. The petitioner than claimed that he alone cannot bc convicted of abetment by conspiracy and as such claimed to be reinstated in the service. It was held that the principal offender Major Trilokchand was acquitted as substantive offence against him was not established and out of nine abettors eight were also acquitted, therefore, only petitioner cannot be held guilty of abetment by conspiracy because one cannot conspire with one self.

iii) Abetment by Aiding: Helping or to facilitate the actual offender in commission of the crime is known as 'Abetment by Aiding'. The aiding should be intentional aiding, which may consist in any of the three essential ingredients, namely—

1. Doing of an act directly assisting the commission of the crime or
2. Illegally omitting to do a thing, which one is bound to do or
3. Doing any act, which may facilitate the commission of a crime by another.

The third clause of Section 107 along with explanation 2 reveals that an act, which merely amounts to aiding the commission of an offence, does not amount to abetting an offence unless that act was done with intent to aid the commission of the thing. For example, A incites B to kill C by uttering the words '*maro, maro*' ('beat him, beat him') and D puts a knife in 'B's hands. Here both A and D are guilty of abetting the offence of murder, one (A) by instigation and the other (D) by aiding to commit the offence.

Aid may be given by an act of commission as well as by an act of illegal omission. For instance, if a police officer keeps himself away from a place knowing that certain persons were likely to be tortured for the purpose of extorting confession, he is liable for abetting the offence of extortion by an act of omission.

What is crucial to note is that the illegal omission should be of an act that the person is in law expected to do. Thus, when the law imposes on a person a duty to discharge, his illegal omission to act renders him criminally liable. In a case where lorry driver, who allowed a child to drive, knowing the child did not know driving, which resulted in accident, it can be considered that the driver abetted the offence by illegal omission. However, a sheer negligent act though in contravention of legal rules does not amount to an abetment by 'illegal omission.'

4. ABETTOR (Section 108)

A person who abets another to commit an offence is called 'abettor'. Section 108 explains, as to who is an abettor. The abetment must be for commission of a criminal act.

Section 108 reads as follows: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1: The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2: To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations:

(a) A instigates B to murder C. B refused to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3: It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations:

(a) 'A', with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A whether the act be committed or not, is guilty of abetting an offence.

(b) 'A', with the intention of murdering 'Z', instigates 'B', a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder and he is, therefore, subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house and is liable to the punishment provided for the offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly.

Explanation 4: The abetment of an offence being an offence; the abetment of such an abetment is also an offence.

Illustration:

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5: It is not necessary to the commission of the defence of abetment by conspiracy that the abettor, should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration: A concerts with B a plan of poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name, C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section and is liable to the punishment for murder.

It is clear from the above that, an abettor is a person, who abets—

(i) the commission of an offence or

(ii) the commission of an act, which would be an offence, if committed by a person, capable of committing an offence in the eyes of law.

The abettor could be either an instigator, or a conspirator, or a person giving aid to the commission of a crime as defined in Section 107. Abetment involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to effect the criminal act or purpose, is punishable under the code.

The crucial aspect is that the abetment must be of an offence or an act which amounts to an offence. Hence, if the thing abetted is not an offence, then the person abetting will not be considered an abettor falling within the coverage of Section 108 and cannot be held liable for punishment as provided in law. Section 108 does not contemplate any acts of subsequent abetment.

The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal. A person who has been convicted of an offence as principal cannot also be punished for abetting it.

A very important aspect of the definition of abettor is to be found in the explanations and illustrations provided with the main definition of abettor in Section 108. The definition of abettor has been expanded and explained through five explanatory clauses dealing with:

1) Abetment of illegal omission is an offence;
2) Abetment act need not be committed: effect of abetment is immaterial;
3) Person abetted need not be capable of committing an offence;
4) Abetment of an abetment is an offence;
5) Abettor need not concert in abetment by conspiracy.

5. Abetment in India of Offences outside India (Section 108 A): Section 108A is added to the Indian Penal Code, 1860 by the Amendment Act 4 of 1898 (Sec. 3). It deals with commission of an offence outside India as a consequence or in pursuance of the abetment that took place in India. In such cases, both the abettor in India and the principal offender, who committed the offence outside India (extra territorial limits or a foreign country) are punishable as per the Penal Code in India.

A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

Illustration: A, in India, instigates B, a foreigner in London, to commit a murder in London. A is guilty of abetting murder.

6. Abetment by various/different means and Punishments:

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment (Section 109): Whoever abets any offence shall, if the abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation: An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations:

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy and is liable to the punishment for murder.

Punishment of abetment if person abetted does act with different intention from that of abettor (Section 110): Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act abetted and different act done (Section 111): When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:-

Proviso:- Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

E.g.: A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

Abettor when liable to cumulative punishment for act abetted and for act done (Section 112): If the act for which the abettor is liable under the last preceding Section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

E.g.: A instigates B to resist by force a distress made by a public servant. B, in consequence resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress. A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor (Section 113): When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

E.g.: A instigates B to cause grevious hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z, Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed (Section 114): Whenever any person, who if absent would be liable to be punished as an abettor is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of offence punishable with death or imprisonment for life, if offence not committed (Section 115): Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine;

If act causing harm be done in consequence:- And if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

E.g.: A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Abetment of offence punishable with imprisonment – if offence be not committed (Section 116): Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that

offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

If abetter or person abetted be a public servant whose duty it is to prevent offence:- and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

E.g.: (a) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed. A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(b) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official function, B refuses to accept the bribe. A is punishable under this Section.

Abetting commission of offence by the public or by more than ten persons (Section 117): Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

E.g.: A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this Section.

Concealing design to commit offence punishable with death or imprisonment for life (Section 118): Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life;

[voluntarily conceals, by any act or omission or by the use of encryption or any other information hiding tool, the existence

of a design] to commit such offence or makes any representation which he knows to be false respecting such design. (Subs. For "voluntarily conceals, by any act or illegal omission, the existence of a design" by the Information Technology (Amendment) Act, 2008 (10 of 2009), Sec. 51, w.e.f. 27.10.2009.)

If offence be committed; if offence be not committed: shall if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

E.g.: A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this Section.

Public servant concealing design to commit offence which it is his duty to prevent (Section 119): Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;

[voluntarily conceals, by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design; (Subs. For "voluntarily conceals, by any act or illegal omission, the existence of a design" by the Information Technology (Amendment) Act, 2008 (10 of 2009), Sec. 51, w.e.f. 27.10.2009).

If offence be committed: shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence be punishable with death, etc.: or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

If offence be not committed: or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

E.g.: A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this Section.

Concealing design to commit offence punishable with imprisonment (Section 120): Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment;

Voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design;

If offence be committed; if offence be not committed: shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term for such imprisonment, or with such fine as is provided for the offence, or with both.

LECTURE-VIII

CRIMINAL CONSPIRACY

Sections 120A and 120B of The Indian Penal Code, 1860 deal with Criminal Conspiracy. These two Sections were inserted in I.P.C. by Criminal Law (Amendment) Act, 1913 with a view to make 'Criminal Conspiracy a substantive offence.' Section 120A defines the offence and Section 120B provides/prescribes punishment for the offence.

This lecture covers—

1. Historical Background.
   (History of Law of Conspiracy in India)
2. Conspiracy: Meaning and Definition (Sec.120A)
3. Ingredients or Essential Elements
4. Punishment for Criminal Conspiracy (Sec. 120B) and
5. Distinction between Abetment and Criminal Conspiracy.

1. Historical Background (History of the Law of Conspiracy in India): Originally the 1860 Code contained only two provisions by which conspiracy was made punishable, namely, (1) conspiracy by way of abetment (Sec. 107) and conspiracy involved in certain offences as for example a thug (Sec. 310), gang of dacoits (Sec.400) or thieves (Sec. 401). Thus, in the law, as it originally existed some overt act by way of furthering the object of the conspiracy on the part of the accused was a pre-requisite for imposing criminal liability against them.

In 1868, in ***Mulcaby v. R*** **[(1868) LR 3 HL 306],** it was ruled that "A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indicatable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise *actus contra actum* capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means."

This judgment introduced in English Common Law the principle that a mere agreement of two or more persons to do an unlawful

act or a lawful act by unlawful means was sufficient to attract liability under conspiracy, even if no specific overt act had been committed. Accordingly the Indian Penal Code, 1860 was amended in 1870 by inserting Section 121A. To assimilate the law of criminal conspiracy in India with that of England, the Indian Criminal Law (Amendment) Act of 1913 added Chapter V-A with Sections 120A and 120B to the Indian Penal Code, 1860.

With the inclusion of Sections 120A and 120B, the Indian Penal Code now encompasses the law relating conspiracy to cover the following:

i) Conspiracy as a substantive offence (Ch. V-A: Ss. 120A and 120B);

ii) Conspiracy as a form of abetment (Ch. V. S. 107 Secondly);

iii) Conspiracy to wage, attempt to or abet war against the Government of India (Ch. VI, S. 121A; and

iv) Involvement in specific offences (Ch. XVI: Ss. 310 and 311; Ch. XVII Ss. 400, 401 and 402);

v) Abetment by conspiracy (Sec. 107, Secondly);

vi) Conspiracy to commit an offence; and

vii) Conspiracy to do an illegal act.

2. Conspiracy: Meaning and Definition:

Etymologically, the word 'Conspiracy' means "breathing together". The term 'Conspiracy' means "it is an act of making secret plan by one (or more persons) with another or others especially with a view to do something wrong." A conspiracy means "nothing more than a combination and agreement by persons to do some illegal act or acts. It is not possible to breathe together unless the heads are put together. Hence, conspiracy is an act for which atleast two persons are essential. In other words, when two or more persons agree to commit a crime, they are said to have conspired. It is immaterial, whether the crime is committed or not. The persons are called 'conspirators'.

Halsbury's Law of England explain the concept of Criminal Conspiracy thus: "Conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means. It is an inevitable offence of common law, the

punishment for which is imprisonment or fine or both at the discretion of the Court."

English Law defined conspiracy as 'an agreement of two or more persons to do an illegal act or a legal act by an illegal means'.

Section 120A defines Criminal Conspiracy, which reads as follows:

When two or more persons agree to do, or cause to be done

1. an illegal act; or
2. an act which is not illegal by illegal means, such an agreement is designated as a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

3. Ingredients or Essentials: To constitute criminal conspiracy, the following ingredients are to be satisfied.

1. There must be an agreement between the persons, who are alleged to conspire; and
2. The agreement should be:
   i) for doing of an illegal act; or
   ii) for doing by an illegal means an act, which may not itself be illegal.

In simple words, to constitute criminal conspiracy,

1. There must be an agreement between two or more persons.
2. The agreement must be for:
   i) doing an illegal act; or
   ii) doing a lawful act by illegal means; and
3. There must exist over act.

The essence of a criminal conspiracy embodied in Section 120A of the Code is the unlawful combination and ordinarily the offence is complete when the combination is framed.

The law of criminal conspiracy as outlined in the IPC takes two forms namely, (i) where overt act is not necessary and an agreement *per se* is made punishable; and (ii) where overt act is necessary. In the former, a mere agreement to commit an offence (without proof of any overt act in pursuance thereof) amounts to criminal conspiracy. In the latter form, a mere agreement to do or cause to be done an illegal act (other than an offence) or a legal act by illegal means does not amount to criminal conspiracy unless a party to the agreement commits some overt act in pursuance of the agreement.

Two or more persons: To constitute the offence of conspiracy, there must be an agreement of two or more persons. It was laid down in the case of—

***Topandas vs. State of Bombay,* (1955) 2 SCR 881: AIR 1956 SC 33:** That "there must be two or more persons and one person alone can never be held guilty of criminal conspiracy", and this view was approved by the Supreme Court in—

***Haradhan Chakraborty vs. Union of India,* (1990) 2 SCC 143: AIR 1990 SC 1210.**

***CBI v. V.C. Shukla* [AIR 1998 SC 1406]:** In this case, the prosecutor could not prove that one of the two accused was party to conspiracy and therefore it was held that the charge of conspiracy cannot stand against other accused as in a conspiracy there must be two parties or two persons. The Supreme Court distinguished Tapan Das case and held that "it is not essential that more than one person should be convicted of the offence of conspiracy. It is enough if the Court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. If it is proved that two or more were engaged in a conspiracy, although they could not be caught, one alone may be convicted.

***Nand Kumar Singh v. State of Bihar* [AIR 1992 SC 1939]:** In this case, where the accused, an LIC agent, was charged with cheating the LIC by entering into conspiracy with the co-accused, a Development Officer, on the allegation that insurance policies were got issued on the basis of fake and forgery documents and he received premium commission and bonus in respect of those policies. The accused was entitled to be acquitted because the forgery was done by the co-accused without the knowledge and

consent of the accused. Bonus, Comission etc. in respect of those policies were credited to his account only in the normal course.

Under Common Law, husband and wife constitute one person and hence, there cannot be any conspiracy to commit an offence. But, in India, husband and wife by themselves alone can be parties to a criminal conspiracy.

Whether single person can be convicted for conspiracy?

The question is, whether a single person can be convicted for criminal conspiracy?

The rule that "one person alone cannot be held guilty of criminal conspiracy, was abolished by Section 5(8) of the Criminal Law Act, 1977, which provides that "unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted."

Thus, the question that, whether a single person can be convicted for conspiracy was answered/decided in affirmative by the Supreme Court in:

***Bimbadhar Pradhan vs. State of Orissa,* AIR 1956 SC 469; 1956 SCR 206.** The accused along with four other subordinates was charged with the offence of criminal conspiracy to misappropriate Government funds. The Sessions Court acquitted the four subordinates and convicted him. On appeal to High Court, he was acquitted on the other charges, but conviction against conspiracy was confirmed by the High Court. He preferred an appeal before the Supreme Court. The Supreme Court upheld the conviction and laid down that, conviction of a single person against the criminal conspiracy is legal.

2. Agreement: The offence of conspiracy is complete as soon as the parties agreed to do an illegal act or a legal act by an illegal means. Mere agreement is enough. It is immaterial even if nothing has been done in pursuance of the act.

3. Illegal Act or Legal Act by an Illegal Means: To constitute criminal conspiracy, the agreement entered into between the parties/conspirators must be for the committing/doing an illegal act or legal/lawful act by illegal means.

4. Punishment for Criminal Conspiracy (Sec. 120B): Section 120 B of I.P.C., makes provision for punishment of the conspiracy.

In case conspiracy is to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or more and no specific punishment for the same is provided for under the Code, the conspirators shall be punishable as abettor. In other cases, the conspirators are punishable with imprisonment for a term not more than 6 months or fine or with both fine and imprisonment.

Section 120B reads as follows:

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

For purposes of punishment, Section 120B divides criminal conspiracies into two classes: ((i) A party of a conspiracy to commit a serious offence is punished in the same manner as if he had abetted the offence. (ii) Conspiracies to commit any other offence and conspiracies to commit illegal acts other than offences are subjected to imprisonment for a term upto six months with or without fine or both.

Section 120B of the code is required to read with Section 196 of the code. It mendates a Court not to, without prior sanction of the State Government or the District Magistrate, take cognisance of a criminal conspiracy to commit an offence punishable with imprisonment of a term more than two years. No prior sanction of the concerned State Government or of the District Magistrate is required when the criminal conspiracy related to an offence punishable with imprisonment for two or less than two years imprisonment. For initiating criminal proceedings parties to a conspiracy made abroad, requires sanction of the Central Government. A conspiracy hatched in India to commit an unlawful act outside India does not require sanction of the Central Government.

5. Difference between Abetment and Criminal Conspiracy: As regards the difference between Abetment and Criminal conspiracy, the former (Abetment) is wider of the two. Abetment is a genues, of which conspiracy is a species. Abetment may be committed in various ways. Whereas, conspiracy is one of the Abetment *per se* is not a substantive offence, while criminal conspiracy is a substantive offence by itself. Following are the notable points of distinction between the two:

Abetment	Criminal Conspiracy
1. It is a process by which one or more engage/employ other/others for commission of an offence. The former i.e., the person, who abets is called the 'Abettor'. While commits the offence with his own hands is called the 'Principal Offender'.	1. It is a process by which an agreement is entered into between two or more persons for commission of an illegal act or doing/committing a lawful/legal act by illegal means. The parties to the agreement are called 'Conspirators'.
2. It can be committed by one or more.	2. It can be committed by two or more.
3. Sections 107 to 120 deal with Abetment.	3. Sections 120 A and 120 B deal with Criminal Conspiracy.
4. It may be committed in various methods/ways (viz. instigation, conspiracy, intentional aid etc.)	4. It is one of the methods of Abetment.
5. Abetment *per se* is not a substantive offence.	5. Criminal Conspiracy is a substantive offence by itself and is punishable.

LECTURE-IX

VICARIOUS LIABILITY

This lecture covers—

1. Vicarious Liability: Meaning
2. Basis/Underlying Principles
3. Vicarious Liability is unknown to Criminal Law
4. Exceptions (Vicarious Liability extends to Criminal Law):
   A) Indian Law
   B) Statutory Liability.

The general rule is that, a person should be punished only for the offence he/she has committed and not for the offence committed by others. The principle of vicarious liability, which plays an important role in the Law of Torts and Civil Law, should not be extended to Criminal Law. Therefore, it is said that **"Vicarious Liability is unknown to Criminal Law."** However, there are certain exceptional cases in which vicarious liability is extended to Criminal Law also. Before examining its applicability to criminal law, it is necessary to know the meaning and basis of vicarious liability as stated below:

The expression 'Vicarious Liability' means "liability, which is incurred for or instead of another." In other words, if one person is held liable for the wrong committed by another, such liability is called 'Vicarious Liability.' For instance, if a driver of a vehicle commits an accident, thereby its owner is held liable; the liability of the owner is called 'Vicarious Liability.' Such liability is created for standing in some special relationship, as in respect of master and servant. Government and its Servants (Public/Civil Servants), principal and agent, employer and independent contractor etc.

2. Basis/Underlying Principles: The principle of vicarious liability is created on the basis of the two underlying principles stated below:

i) ***Qui facit per alium facit per se:*** It means 'he, who does an act through another, is deemed in law, to do it himself.'

ii) **Respondent Superior:** It means 'let the superior be liable.' According to this maxim, liability is imposed on the superior (stronger) man, ignoring the inferior (weaker) man in the interest of the injured party.

3. Vicarious Liability is Unknown to Criminal Law: In law of Torts, vicarious liability plays an important part and master is liable for the torts committed by his servant (subject to fulfilment of certain conditions). In criminal law, the general rule is, vicarious liability is not applicable for commission of crimes.

4. Exceptions (Vicarious Liability extends to Criminal Law): In English Common Law, non-applicability of vicarious liability in respect of crimes is subject to the following exceptions. In other words, vicarious liability is applicable to criminal law in the following cases.

1. A master is vicariously liable and punishable for publication of a libel (defamatory matter in permanent form) by his servant. The master to plead the defence, has to establish that, it was published without his authority or it was published negligently (by his servant). Defamation is an offence under Section 499 and is punishable under Section 500 I.P.C.

2. A master is vicariously liable and is punishable for a public nuisance committed by his servant. (Public nuisance is an offence under Section 268 I.P.C., Sections 269 to 290 provide punishment for the public nuisance). However, it is very difficult to check effectively the acts of public nuisance.

A) Indian Law: As a general rule of criminal law, the master is not held liable for the criminal acts done by his agent or servant. However he will be held responsible, if he is the abettor or conspirator or active partner of the offence. He may be treated as having joint liability and common intention (Sec. 34) or as having constructive liability and common object (Sec. 149).

For Example 'A', a master instructs 'B'-a servant to murder 'C'-'B' murders. Here vicarious liability does not apply. Joint Liability should apply to both A & B and both of them must be

punished accordingly. B cannot plead exemption under vicarious liability.

Munivel v. State of T.N. **[AIR 2006 SC 1761]**: In this case, the Supreme Court held that "Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in persecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in persecution of that object, every person who at the time of committing that offence was member would be party to the offence committed. The Common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case.... It is also well settled that if death had been caused in persecution of the common object of an unlawful assembly, it would not be necessary to record a definite or specific finding as to which particular accused of the members of the unlawful assembly caused the fatal injury."

In India, vicarious liability is imposed on owners or occupiers of land, when unlawful assembly or riot takes place in their land. Sections 154, 155 and 156 of the Indian Penal Code deal with vicarious liability. Section 154 imposes vicarious liability on the owner or occupier of land on which an unlawful assembly is held. Section 155 imposes vicarious liability on owner or occupier of land for whose benefit riot is committed. Section 156 deals with liability of agent of owner or occupier for whose benefit riot is committed.

Sections 154, 155 and 156 of the Indian Penal Code read as follows:

Section 154: Owner or occupier of land on which an unlawful assembly is held – Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be

punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station, and do not in the case of his or their having reason to believe that it was about to be committed use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly. Section 154 punishes owners or occupiers of, or any person claiming an interest in, land upon which an unlawful assembly is held or a riot is committed.

Section 155: Liability of person for whose benefit riot is committed – Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Section 156: Liability of agent of owner or occupier for whose benefit riot is committed – Whoever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom. The agent or manager of such person shall be punishable with fine, if such agent, or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

***R. vs. Prayag Singh,* (I.L.R. 1890 12 All. 550):** In this case, a riot took place on the land of Prayag Singh. During the course of riot, one Pir Khan was killed. Prayag Singh was punished under Section 154 IPC and was fined with Rs.1,000/-.

***Kazi Zeamunddin Ahmed vs. R.* (I.L.R. 1901 28 Cal. 504):** In this case, the owner of an estate, where not took place was convicted under Section 154 IPC for his agent's fault.

B) Statutory Liability: In addition to the above provisions under the Indian Penal Code, there are other statutes such as Prevention of Adulteration of Foods Act, Prevention of Prostitution Act, The Shops and Establishments Act, Weights and Measures Act etc., in which vicarious liability is imposed upon the masters even without ***mens rea.***

Relevant Case on this point is:

Ravula Hariprasada Rao vs. The State*, AIR 1951 SC 204:** In this case, a servant of a petrol dealer supplied motor spirit without coupons and also received advance coupons without supplying motor spirit. The Supreme Court convicted the master even though he had no knowledge as to the act (absence of ***mens rea). He was held vicariously liable and convicted for non-endorsement of coupons, which was mandatory.

Even a Company or Corporation may be held criminally liable for the acts and default committed by its Directors, Agents, Officers etc.

***Moore vs. I. Bresler Ltd.,* (1944 2 All. Eng. Rep. 515):** In this case, a Company was convicted of making false tax returns made by its managers with intent to deceive/defraud not only the tax authorities but also the Company.

LECTURE-X
JURISDICTION
(Sections 1-5)

Protection of individuals' rights and enforcement of laws by the Courts may be termed as "Administration of Justice." It is divided into two parts *namely:* (1) Natural Justice and (2) Legal Justice. In the former, the principles of equity are applied, while in the latter, principles framed and recognised by the State are applied. Legal Justice is divided into (i) Civil Justice, and (ii) Criminal Justice. The main object of civil justice is to regulate civil wrongs and to provide relief to the injured/aggrieved. The object of Criminal Justice is to regulate public wrongs (or crimes or offences). All acts punishable under the Indian Penal Code, 1860 are called offences (Section 40). The power of the Courts to regulate the wrongs is subject to 'Jurisdiction of the Courts'.

Chapter I containing Sections 1 to 5 of the Indian Penal Code, 1860 lays down the provisions relating to title, extent, operation and Jurisdiction of the Code. Section 1 contains title and extent of operation of the Code. Section 2 provides for punishment in respect of offences committed within the territory of India. Section 3 confers on the criminal courts, power to extend jurisdiction over offences committed beyond the territory of India and prescribes the punishment. Section 4 provides for extension of the Code to extra-territorial offences and finally Section 5 makes provision to certain laws not to be affected by this Act.

1. Title, Extent and Operation: The Act entitled "the Indian Penal Code, 1860 came in to force on 1st January, 1862. It is a territorial law. It extends to the whole of India.

2. Jurisdiction of Criminal Courts (Sections 2-4): The expression 'Jurisdiction' denotes power conferred on the Court, by a statute to decide disputes/cases. It means, "the limits, within which the Court can exercise its authority." The limits may be with regard to territorial, pecuniary, subject matter, parties etc. Jurisdiction within the meaning of the Code (The Indian Penal Code) means "the power of a Criminal Court to try a person for

commission of a criminal act". In other words, the power and extent of authority of the Court to try the cases is called jurisdiction.

The competence or authority of the Criminal Courts may be explained with reference to

1. its power, upto what extent it can award punishment (i.e., imprisonment or fine or both),
2. its jurisdiction i.e., within what territorial limits, it can exercise jurisdiction over the persons charged with the commission of offences (Section 26 of Cr.P.C.).

The jurisdiction of a Criminal Court includes the power to try cases, award punishments, impose fines and also to grant the relief asked for. Further, the jurisdiction also includes the power/ jurisdiction to decide rightly as well as wrongly. In case, the Court gives wrong decision, the remedy is to prefer an appeal before the higher Court.

Sections 2 to 4 of the Indian Penal Code, 1860 lay down the provisions relating to the jurisdiction of the Criminal Courts. Section 2 refers to offences committed within the territory of India, while Sections 3 and 4 deal with offences committed beyond the territorial limits of India. Section 2 of the Code provides punishment of offences committed within India and territorial jurisdiction. Section 3 provides for punishment of offences committed beyond, but which by law may be tried within India. Section 4 deals with extension of the Code to extra-territorial offences.

The jurisdiction of Criminal Courts may be classified with reference to the following heads:

1. Territorial Jurisdiction (Sec. 2)
   - i) Personal Jurisdiction.
   - ii) Intra-Territorial Jurisdiction.
2. Extra-Territorial Jurisdiction (Sec. 3 & 4)
   - i) Extra-Territorial Operation (Sec.3)
   - ii) Extension of the Code to Extra-Territorial Offences (Sec.4(1))
   - iii) Admirality Jurisdiction (Sec. 4(2))

3. Certain Laws not to be affected by IPC (Sec. 5).

1. Territorial Jurisdiction (Section 2): It means power of the State to exercise jurisdiction over/throughout its territory of a State. It includes land and sea comprising of territorial waters. The State can exercise jurisdiction over its land, air space, internal waters comprising of rivers, lakes, sea, comprising of territorial waters etc. The State exercises jurisdiction over all ships and aircrafts belonging to India, wherever they are in the world. It can also exercise jurisdiction over the ships and aircrafts belonging to foreign countries within the territorial limits of India. The Territorial Jurisdiction is divided into two kinds namely:

Section 2 provides for punishment of offences committed with in India. It runs as follows—

"Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India."

i) Personal Jurisdiction

ii) Intra-territorial Jurisdiction.

i) Personal Jurisdiction: According to Section 2 of the Indian Penal Code, 1860, every person irrespective of his rank, nationality, caste or creed shall be liable to punishment for an offence committed in India and of which he is found guilty. It extends to foreign nationals also as it makes no distinction between the Indian citizen and a foreigner. It is no defence on behalf of a foreigner that he did not know that he was doing wrong.

A foreigner who enters the Indian territories and thus accepts the protection of Indian laws virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. It is no defence on behalf of a foreigner that he did not know he was doing wrong, the act not being an offence in his own country. For instance, adultery is no offence in America. But, it is an offence punishable under Section 497 I.P.C. If an American commits the offence of adultery in India, he is punishable under Section 497 I.P.C.

Exceptions: The following persons are always exempted from the jurisdiction of Criminal Courts as certain rights and privileges are conferred on them.

i) Foreign Sovereigns.

ii) Ambassadors.

iii) Alien Enemies.

iv) Foreign Army.

v) Warships and

vi) President and Governors (Art. 361 of the Indian Constitution).

i) Foreign Sovereigns: Foreign Sovereigns are the persons completely exempted from the jurisdiction of the IPC.

In ***Schooner Exchange v. M. Faddon*** **[(1812) 7 Cranch 116],** Chief Justice Marshall observed that one sovereign being bound by the obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express licence or in confidence that the immunities belonging to his independent sovereign nation, though not expressly stipulated, are reserved by implication, and will be extended to him.

ii) Ambassadors: Certain immunities and privileges have been granted to Ambassadors of other countries by the United Nations (Privileges and Immunities) Act, 1947 of India. Therefore, the Ambassadors are exempted from the jurisdiction of the Indian Criminal Courts. They enjoy the same immunity as the sovereign or the State, which they represent. They enjoy this immunity on mutual basis. The privileges and immunities are also available to the United Nations. Its representatives as well as to other international organisations and their representatives.

iii) Alien Enemies: The military persons of alien enemies cannot be tried by the Criminal Courts of India in respect of their acts of war. If an alien enemy commits a crime unconnected with war as theft, cheating etc., he would be triable by Criminal Court. For acts of war they shall be dealt with under martial law.

iv) **Foreign Army:** When armies of any foreign State are stationed on the Indian soil with the consent of the Indian Government, they are immune from the jurisdiction of the local Criminal Courts. It is a settled international practice.

v) **Warships:** The warships entering into the Indian Sea waters cannot be tried under the ordinary Indian Criminal Courts. The Public International Law applies to such men-of-war. Warships of a foreign country can enter territorial waters of India only with the permission of the Government of India.

However, where offences were committed by a shipping company which fell under the Indian Penal Code, the Merchant Shipping Act, 1958 did not bar proceedings under the Criminal Procedure Code, 1974.

According to Gazette of India, Extraordinary Part III Section 2, dated 30-9-1967, the territorial waters of India extend into the sea to a distance of twelve nautical miles measured from the appropriate baseline. The territories strictly speaking, of a State include, therefore, not only the compass of land, in the ordinary acceptance of the term, belonging to such State, but also that portion of the sea lying along and washing its coasts, which is commonly called its maritime territory. The laws of that State apply to acts committed within them

vi) **President and Governors (Art. 361 of the Indian Constitution):** The President of India and the Governors of the State are exempt from the jurisdiction of the Code. Article 361 of the Constitution provides that 'no criminal proceedings shall be instituted or continued against the President or a Rajyapal of a State in any Court during the term of his office.

ii) **Intra-territorial Jurisdiction:** The general rule is, the enforcement of law by its nature is territorial. No State allows the other States to exercise jurisdiction over its territory. Such power of the State to extend jurisdiction over offences committed within its territory is called "Intra-territorial Jurisdiction."

Section 2 of the Code, deals with the Intra-territorial Jurisdiction. According to Section 2, "any person, who is found guilty of committing an offence within the territories of India

including the territorial waters (of 12 nautical miles measured from the base lines, from which the territorial sea is measured) is punishable under the Code.

However, the State under certain circumstances is allowed to extend jurisdiction outside its territory/territorial limits. Such extension is called "Extra-territorial Jurisdiction."

2. Extra-territorial Jurisdiction (Secs. 3 & 4): The expression 'Extra-territorial Jurisdiction' denotes "power of the State to exercise jurisdiction beyond the territorial limits of the State as explained below—

i) Extra-Territorial Operation (Section 3)

ii) Extension of the Code to Extra-Territorial Offences (Section 4(1)) and

iii) Admirality Jurisdiction (Section 4(2))

i) Extra-territorial operation (Section 3): It means "the effect to be given in the Courts and within the territory of the enacting States as against person without the State or in respect to property situated or transactions happening abroad." Sections 3 deals with extra-territorial operation of the Code. It provides punishment for the offences committed beyond the territory of India, but which by law may be tried within India. It reads as follows:

"Any person liable, by any Indian Law, to be tried for an offence committed beyond India, shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act has been committed within India."

Section 3 says that, an Indian citizen may be prosecuted/ punished in India for committing any act, which is an offence under any Indian enactment. Similarly, Section 188 of the Code of Criminal Procedure, 1973, also provides that "when an offence is committed outside India – (a) by a citizen of India, whether on the high seas or elsewhere, or (b) by a person not being such citizen on any ship or aircraft registered in India. Such offence shall be inquired into and tried in India with previous sanction of the Central Government.

E.g.: A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

Section 3 of the IPC provides that an Indian Citizen may be prosecuted in India for anything done in foreign lands, if it is an offence under any Indian enactment though it may not be such an act in the place of commission. If an Indian commits adultery in America, which is not an offence in that country, but is an offence in India, he may be prosecuted in India.

The operation of Section 3 is restricted to the cases specified in the Extradition Act, 1962 and Sections 187, 188 and 189 of the Criminal Procedure Code, 1973.

***Remia v. Sub-Inspector of Police, Tanur,* 1993 CrLJ 1998 (Ker):** In this case, an Indian citizen murdered another Indian citizen in a foreign country. The police refused to register an FIR on the ground that, the offence was committed outside India. The Court held that the refusal was illegal and directed to register the crime and proceed with investigation in accordance with the law under Section 3 of the Indian Penal Code.

Section 188 of the CrPC provides that "When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere, or

(b) by any person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

However, in ***Mohd Sajeed K v. State of Kerala,* (1995 CrLJ 3313 (Ker),** it was held that an offence committed outside India by a citizen of India can be investigated by the local police even without prior sanction of the Central Government.

ii) Extension of the Code to Extra-Territorial Offences (Section 4(1)): Section 4 provides for extension of the Code to extra-territorial offences, which reads as follows:

The provisions of this Code apply also to any offence committed by—

1. any citizen of India in any place within and beyond India;
2. any person on any ship or aircraft registered in India wherever it may be.
3. Any person in any place without and beyond India committing offence targeting a computer resource located in India. [Information Technology Amdt. Act (Act 10 of 2009]

Suppose A committed murder/crime in India and fled for Pakistan to escape from the punishment/criminal liability. If the State of Pakistan gives/grants him shelter and protects him, such protection and shelter extended is called 'Asylum'. In other words, A is said to be in 'asylum'. If A (alleged offender) is handed over or delivered to India by Pakistan, such delivery of the accused is called 'extradition'.

Jurisdiction of Indian Courts: Indian Courts are competent/ empowered to try offences committed outside of India on (A) Land (B) High seas; or (C) Aircraft.

***Mubarak Ali Ahmed vs. State of Bombay*, AIR 1957 SC 857:** In this case, the accused, Mubarak Ali was a Pakistani national undertaking foreign trade at Karachi. The complainant, Luis Antonio Correa was a business man at Goa in India.

The accused entered into an agreement with the complainant to supply 2000 tons of rice. He (the accused) received major part of the payment in advance and the balance amount through his agent at Bombay, but did not supply the rice. The complainant lodged a complaint against the accused for cheating. Later, the accused was found in London. Against an application by the Indian authorities, British Government arrested the accused and extradited him to India. The Trial Court found him guilty of cheating under Section 420 I.P.C., and sentenced imprisonment for 3 years and

10 months. On appeal, the Bombay High Court confirmed the conviction by the Trial Court. Then, he preferred an appeal before the Supreme Court, which also upheld the conviction (on the ground that "the appellant ceased to be an Indian citizen and was a Pakistani national at the time of commission of the offence, he must be held guilty and punished under I.P.C. notwithstanding he is not being corporeally present in India at that time." The amount was paid to him through his agent at Bombay and hence the offence is deemed to have taken place at Bombay.

***Central Bank of India vs. Ram Narain,* (AIR 1955 SC 36):** In this case, the Supreme Court held that if a person, who is not an Indian citizen commits an offence outside India, he cannot be tried for the offence by an Indian Court merely because he subsequently acquires Indian Nationality. In such a case, the provisions of Section 4 I.P.C. and Section 188 Cr.P.C. are not attracted.

iii) Admirality Jurisdiction (Sec.4(2)): Admirality Court is a special Court designed to deal with mercantile cases and maritime cases in particular. Mercantile cases means the cases pertaining to disputes between the merchants or traders, while the maritime cases means cases pertaining to the offences committed on high seas including piracy (robbery committed on the board of a ship). Admirality Jurisdiction means power conferred on the Courts to try to maritime and mercantile cases.

Section 4 of the Code confers on the Indian Courts, power to extend their jurisdiction over –

a) offence committed on Indian ships on the high seas;

b) offences committed on foreign ships in Indian territorial waters and

c) Piracy.

(High seas means waters beyond the national jurisdiction i.e., the waters, which a coastal State cannot exercise jurisdiction. High seas belong to no State i.e., *res. Nullius.* But, it belongs to *res communis* i.e., it (Sea) belongs to all States including land-locked and geographically disadvantaged States of the world community.)

4. Certain Laws not to be affected by IPC (Sec. 5): As per Section 5 of the IPC, nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

The personnel of the Army, Navy and Air force are governed by the provisions of the Army Act, 1950, the Navy Act, 1957 and the Indian Air force Act, 1950 in regard to offences of mutiny and desertion committed by them.

A special law is a law, relating to a particular subject; whereas a local law is a law which applies only to a particular part of the country. No prosecution is admissible if it appears upon the whole frame of the special or local Act that it was intended to be a complete code in itself and to be enforced only by the penalties created by it. A person cannot be punished under both the Penal Code and a special law for the same offence, and ordinarily the sentence should be under the Special Act.

CASE COMMENT

1. Discuss the facts and law laid down in the following cases:

1. *R. vs. Prince,* (1875) L.R. 2 CCR 154.

Ans.: Instant case refers to "application of the doctrine of *mens rea* in statutory offences (English Law)."

Mens rea is an essential element of the concept of crime. The other elements of crime are, *Actus Reus* (Physical Act), Human being and Injury.

Mens rea:

Mens rea means 'mental element or evil intent or guilty mind'. It may be defined as "the mental element necessary to constitute criminal liability." According to *Samshul Huda,* an eminent Jurist, "the very corner-stone of criminal jurisprudence is the *mens rea.*"

Mens rea means "an intention to do a forbidden act." The term *'mens rea'* is not defined in the Penal Code. It is expressed in the Latin maxim *"ACTUS NON FACIT REUM NISI MENS SIT REA"* as a fundamental principle for penal liability. It means, intent and act must both concur to constitute a crime. In other words, an act itself is no crime, unless it is coupled with an evil intent. For a person to be held guilty of a crime, it is necessary that he had an intention to do it. A person to be held guilty of theft, it should be established that he had an intention to steal.

The application of the doctrine of *mens rea* in statutory offences is well explained in the present case:

***R. vs. Prince,* (1875) L.R. 2 CCR 154.**

Facts of the Case: Mr. Prince, the accused in the instant case, was in love with a girl Miss. Annie Philips, who was below the age of 16 years. The accused had taken away the unmarried girl from the lawful custody of her parents with an intention to marry her. He thought that she was above 16 years and the girl told him that, she was 18 years old. The father of the girl lodged a complaint, alleging that Prince had illegally taken away his unmarried minor daughter below the age of 16 years. Prince was arrested and the criminal proceedings were instituted against him.

Decision/Judgment: According to Section 55 of the Offences against Person Act, 1861 (in England), "taking away an unmarried girl below the age of 16 years from the lawful custody of her parent or guardian against the will of her parent/guardian itself is an offence and such person is guilty of misdemeanour."

The Court through *Blackburn J.,* rejected the contention/ defence on the part of the accused that he *bonafide* believed and had reasonable ground for believing that the girl so taken by him was over sixteen, and held that the accused was guilty of misdemeanour (kidnapping) under Sec. 55 of the Offences Against Person Act, 1861.

The accused, though he had no *mens rea*, was convicted on the ground that his act of taking away an unmarried girl below the age of 16 years from the lawful custody of her parent itself was an offence punishable irrespective of the proof of *mens rea.*

Principle: The principle applied in the instant case was, "whosoever shall unlawfully take any unmarried girl, being under the age of 16 years out of the possession and against the will of her father or mother shall be guilty of a misdemeanour".

Blackburn J., said "we are of opinion that the intention of the legislature sufficiently appears to have been to punish the abduction, unless the girl in fact was of such an age to make her consent an excuse, irrespective of whether he knew her to be too young to give an effectual consent and to fix that age at sixteen years. The man who has connection with a child, relying on her consent, does it at his peril if she is below the suitable age". *Bramwell B.* added, "the legislature has enacted that if any one does this wrong act he does it at the risk of her turning out to be under sixteen". In ***R. vs. Bishop,*** **(S.Q.B.D. 259)** the accused was convicted for receiving lunatics in an unlicensed house, although he honestly and on reasonable grounds believed that they were not lunatics.

Granville Williams says that "although a requirement of *mens rea* will generally be implied into a statute, this *mens rea* generally means only the intent to do the forbidden act, it does not generally require a dishonest intent or to intend defraud".

Special Note: If any case is asked as short question/notes, the student has to identify the case to which it relates (i.e., this case refers to.....) and then write only facts of the case with decision/judgment. The student is suggested to summarise or expand the answer commensurate to the marks awarded to the question.

2. *R. vs. Talson* (1889 Q.B.D. 168):

Ans.: Instant case refers to "application of the doctrine of *mens rea* in statutory offences (English Law)".

Mens rea is an essential element of the concept of crime. The other elements of crime are, *Actus Reus* (Physical Act), Human being and Injury.

Mens rea: *Mens rea* means 'mental element or evil intent or guilty mind'. It may be defined as "the mental element necessary to constitute criminal liability." According to *Samshul Huda*, an eminent Jurist, "the very corner-stone of criminal jurisprudence is the *mens rea*."

Mens rea means "an intention to do a forbidden act." The term '*mens rea*' is not defined in the Penal Code. It is expressed in the Latin maxim "*ACTUS NON FACIT REUM NISI MENS SIT REA*" as a fundamental principle for penal liability. It means, intent and act must both concur to constitute a crime. In other words, an act itself is no crime, unless it is coupled with an evil intent. For a person to be held guilty of a crime, it is necessary that he had an intention to do it. A person to be held guilty of theft, it should be established that he had an intention to steal.

The application of the doctrine of *mens rea* in statutory offences is well explained in the present case:

***R. vs. Talson* (1889 Q.B.D. 168):**

Facts in brief: Mrs. Talson married Mr. Talson in September, 1880. Her husband deserted her in 1881. Mr. Talson's whereabouts were unknown for more than 7 years. She made all enquiries about her husband and learnt from reliable sources that he died in a ship-wreck. Mrs. Talson got remarried in 1887 reasonably believing that her husband died. Some time, after her remarriage, her first husband reappeared and charged her for bigamy.

Judgment/Decision: The Trial Court convicted Mrs. Talson for one day imprisonment. She preferred an appeal before the Court of Appeal.

The question before the Court of Appeal was, whether Mrs. Talson had an evil intention (guilty mind or *mens rea*) in getting remarried during the life-time of her (first) husband?

The Court of Appeal by majority set aside the conviction by the Trial Court on the ground that she had no *mens rea* in committing the offence (of bigamy). The Court opined that her *bona fide* belief as to the death of her first husband from all reliable source was a good defence to get exemption from criminal liability for the offence of bigamy.

Principle: The Court of Appeal laid down that the doctrine of mens rea would be applied in statutory offences. The Court opined that the statutory limitations, the absence of the spouse for seven years (i.e., the whereabouts are unknown for seven years) was completed at the time of the second marriage. (Statutory limitation: A person, whose whereabouts are unknown for a period of seven years or above is presumed to be dead. If the whereabouts of one spouse (wife or husband) are unknown for seven years, the other spouse has a right to get remarried legally without any fear of criminal liability for bigamy).

3. *Srinivasmall vs. Emperor,* AIR 1947 PC 135.

Ans.: Instant case refers to:

i) the application of *mens rea* in Indian Law (Indian Cases) and

ii) the application of vicarious liability in Criminal Law.

Mens rea: *Mens rea* means 'mental element or evil intent or guilty mind'. It may be defined as "the mental element necessary to constitute criminal liability." According to *Samshul Huda*, an eminent Jurist, "the very corner-stone of criminal jurisprudence is the *mens rea.*"

Mens rea means "an intention to do a forbidden act." The term '*mens rea*' is not defined in the Penal Code. It is expressed in the Latin maxim "*ACTUS NON FACIT REUM NISI MENS SIT*

REA" as a fundamental principle for penal liability. It means, intent and act must both concur to constitute a crime. In other words, an act itself is no crime, unless it is coupled with an evil intent. For a person to be held guilty of a crime, it is necessary that he had an intention to do it. A person to be held guilty of theft, it should be established that he had an intention to steal.

The application of the doctrine of *mens rea* in Indian Law is well explained in the present case:

Vicarious Liability: It means "liability incurred/created for another". If one person is held liable for the wrong committed by another, such liability is called "vicarious liability".

E.g.: Liability of a master for the wrong committed by his servant or agent. Generally, the vicarious liability extends to civil wrongs (Torts, Breach of Contract etc.) and not for the criminal acts.

Thus, the general rule in Criminal Law is that a master is not liable for the criminal acts done by his servant or agent. It is said that "Vicarious Liability" is unknown to Criminal Law. However, there are certain exceptions to this general rule (i.e., Master is liable for criminal acts of his servant). The master is vicariously liable if he is the abettor or conspirator or has a joint liability under Section 34 or 149 I.P.C.

Facts of the case: Srinivasmall, the accused in the instant case was an authorised licensee for distribution of salt in a district. He had to distribute the salt at the controlled rates to the various retain dealers after making due entries in prescribed coupons subject to the rules and regulations under the Defence of India Act of 1939. His servant (clerk) without his (master's) knowledge, had infringed a rule laid down under the Act, while distributing the salt. The accused (master) was really unaware of the rule under the Act. The prosecution proceedings were initiated against the accused/master for infringing the rules under the Act.

Judgment: The Privy Council held the accused not guilty of the offence and acquitted him on the ground that-

i) the rule in question does not belong to the category of rules under which offence can be committed without a

guilty mind. In other words, he was found not guilty of the offence as he had no mens rea /guilty mind; and

ii) that the master cannot be held vicariously liable for a criminal act committed by his agent/servant since "Vicarious Liability is unknown to Criminal Law".

4. *Ravula Hari Prasada Rao vs. State,* AIR 1951 SC 204.

Ans.: The present case refers to:

i) the application of mens rea in Indian Law; and

ii) the application of Vicarious Liability in Criminal Law.

Mens rea: *Mens rea* means 'mental element or evil intent or guilty mind'. It may be defined as "the mental element necessary to constitute criminal liability." According to *Samshul Huda*, an eminent Jurist, "the very corner-stone of criminal jurisprudence is the *mens rea.*"

Mens rea means "an intention to do a forbidden act." The term *'mens rea'* is not defined in the Penal Code. It is expressed in the Latin maxim "*ACTUS NON FACIT REUM NISI MENS SIT REA*" as a fundamental principle for penal liability. It means, intent and act must both concur to constitute a crime. In other words, an act itself is no crime, unless it is coupled with an evil intent. For a person to be held guilty of a crime, it is necessary that he had an intention to do it. A person to be held guilty of theft, it should be established that he had an intention to steal.

The application of the doctrine of *mens rea* in Indian Law is well explained in the present case:

Vicarious Liability: It means "liability incurred/created for another". If one person is held liable for the wrong committed by another, such liability is called "vicarious liability".

E.g.: Liability of a master for the wrong committed by his servant or agent. Generally, the vicarious liability extends to civil wrongs (Torts, Breach of Contract etc.) and not for the criminal acts.

Thus, the general rule in Criminal Law is that a master is not liable for the criminal acts done by his servant or agent. It

is said that "Vicarious Liability" is unknown to Criminal Law. However, there are certain exceptions to this general rule (i.e., Master is liable for criminal acts of his servant). The master is vicariously liable if he is the abettor or conspirator or has a joint liability under Section 34 or 149 I.P.C.

Facts of the case: The accused (master) in this case was the owner of two petrol pumps at Guntur (Andhra Pradesh), which were kept/left in charge of his servants. In pursuance of the Motor Spirit Rationing Order, 1941, the owners of the motor vehicles should obtain coupons from the authorities for purchasing petrol from the dealers. The dealer should receive such coupons and endorse on the back of it and then supply the petrol. The dealers were required to maintain the records properly to account for the coupons.

The master (accused/appellant) and his servant were prosecuted for violation of clauses 22 and 27 of the Motor Spirit Rationing Order, 1941 by the servant. It was alleged that the petrol was supplied without coupons in some cases, and in some other cases the petrol was not supplied even after receiving the coupons.

Judgment: Trial Court (The Court of Sub-divisional Magistrate, Guntur) found the accused guilty and convicted him. He preferred an appeal to the High Court, Madras. The accused/ appellant contended that he entrusted the business to his servants/ employees and was not present at the time of commission of the offence and hence he had no mens rea. He also argued that vicarious liability would not extend to Criminal Law (i.e., the master is not liable for the criminal acts of his servant). The Court did not admit his contentions and upheld the conviction on the ground that the application of *mens rea* and exemption from vicarious liability are not relevant/applicable to statutory offences. On further appeal, the Supreme Court held that the master cannot be vicariously liable as he was absent at the time of delivery of the spirit (petrol). However, the Court upheld the conviction of the master (by the High Court) for non-endorsement of the coupons, which was absolute and mandatory and is punishable without/ irrespective of *mens rea*.

Principle: The Principle applied in the instant case was, "a master cannot be held vicariously liable for the criminal acts of his servant/agent as he (master) is not a party to such criminal act. However, the legislature, in the interests of the public welfare and to guard against the forbidden acts by the servants, impose liability upon the master/Principal, though he had no knowledge of such criminal/forbidden acts. Therefore, the legislature passed many legislations viz. Food and Drugs Act, Adulteration of Essential Commodities Act etc. The main objective of the legislature is to make the master absolutely liable irrespective of his intervention/ knowledge and *mens rea* to forbid such acts by the servants.

5. *Barendra Kumar Ghosh vs. King Emperor,* AIR 1925 P.C. 1.

Ans.: This case is popularly known as "Post Master Murder Case". It refers to Section 34 I.P.C., which deals with "Common Intention or Constructive Criminality", under 'Joint Liability'.

Joint Liability: When two or more persons commit a crime jointly, each one of them is equally liable as if he alone has committed such offence. Their liability is called Joint Liability or Constructive Joint Liability. The liability is joint and constructive in the sense, all of them are equally liable and are awarded the same punishment.

Common Intention or Constructive Criminality: Section 34 of the Indian Penal Code speaks about 'Common Intention'. According to Section 34 of the Penal Code, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it is done by him alone. The liability is called "joint liability or constructive liability." It is also known as 'Constructive Criminality'.

The Principle of Constructive Criminality under Section 34 is well explained in the present case.

Barendra Kumar Ghosh vs. King Emperor, AIR 1925 PC 1:

Facts of the case: Barendra Kumar, along with two of his companions went to a Post Office for committing robbery. One

of his companions opened fire, causing the death of the post master. The two others ran away without robbing the money. But, Barendra Kumar was caught with a pistol. He was tried under Section 302/ 34. Barendra Kumar denied the charge on the ground that he did open the fire and he had no intention to kill the post master.

Judgment: The Trial Court did not admit his contention and sentenced him to death and the same was confirmed by the High Court. On appeal to the Privy Council, it was held that upon the true construction of Section 34 of the Code, the direction was correct and Barendra Kumar Ghosh was held guilty with the murder of the post master.

Principle: The Privy Council through Lord Sumner said "Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things, they also serve who only stand wait. By Section 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself for that act.

6. *Mahaboob Shah vs. Emperor,* AIR 1945 P.C., 118.

Ans.: This case is popularly known as 'Indus River Case'. It attracts (refers to) Section 34 I.P.C. which speaks about "Common Intetion or Constructive Criminality" under 'Joint Liability'.

Joint Liability: When two or more persons commit a crime jointly, each one of them is equally liable as if he alone has committed such offence. Their liability is called Joint Liability or Constructive Joint Liability. The liability is joint and constructive in the sense, all of them are equally liable and are awarded the same punishment.

Common Intention or Constructive Criminality: Section 34 of the Indian Penal Code speaks about 'Common Intention'. According to Section 34 of the Penal Code, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner

as if it is done by him alone. The liability is called "joint liability or constructive liability." It is also known as 'Constructive Criminality'.

The principle of 'Common Intention or Constructive Criminality' under Section 34 I.P.C. and the distinction/difference between the Common Intention and similar Intention are well explained in this case.

7. *Kehar Singh and Others vs. State, (Delhi Administration)* (1988) 3 SCC 609: AIR 1988 SC 1883.

Ans.: This case is popularly known as Mrs. Indira Gandhi Assassination case. It refers to Section 120 B I.P.C., which provides for the punishment of Criminal Conspiracy.

Criminal Conspiracy: Section 120 A of I.P.C. defines Criminal Conspiracy and Section 120 B provides punishment for the Criminal Conspiracy. These two sections were inserted in I.P.C. by the Criminal Law (Amendment) Act, 1913 with a view to make the criminal conspiracy, a substantive offence.

When two or more persons enter into an agreement to commit a crime, they are said to have conspired. It is Conspiracy and the persons are called Conspirators. English Law defined 'Conspiracy' as "an agreement of two or more persons to do an illegal act or a legal act by illegal means".

The concept of criminal conspiracy is well explained in the present case.

Kehar Singh and Others vs. State (Delhi Administration):

Facts: On October 31, 1984 at about 9 a.m. Mrs. Indira Gandhi, the then Prime Minister of India on her way to the office from her residence, was shot dead by her body security guards namely Beant Singh and Satwant Singh.

The Indo Tibetan Border Police, who were nearby, immediately seized and brought them to the guard room, where they sustained gun shot injuries. Beant Singh died and Satwant Singh received injuries. Mrs. Gandhi died on her way to the hospital. Apart from the culprit Satwant Singh, Kehar Singh, who was the uncle of the Beant Singh's wife and Balbir Singh an S.I. posted on security

duty at Prime Minister's residence were charged with the offences of criminal conspiracy under Section 120 B and Section 302 I.P.C.

Judgment: All the three accused namely Satwant Singh, Kehar Singh and Balbir Singh were sentenced to death by the Trial Court, and the death sentences were confirmed by the Delhi High Court.

On appeal, the Supreme Court acquitted Balbir Singh opining that he had not participated in the criminal conspiracy (i.e., not guilty or party to the criminal conspiracy). The Supreme Court found Satwant Singh guilty of murder and criminal conspiracy and Kehar Singh guilty of criminal conspiracy and confirmed the conviction/death sentences of Satwant Singh and Kehar Singh.

The Court while delivering the judgment, did not take into consideration, the doctrine that death sentence should be imposed/ inflicted only in rarest of rare cases was not applied for the reason, the accused, being the security guards, must protect her from others, but killed her on the other hand. Hence, the Court considered the imposition/infliction of death sentence to Satwant Singh and Kehar Singh just and proper.

Principle: It is very difficult to the prosecution to adduce direct evidence to prove conspiracy as it takes place secretly or in a clandestine way/manner. The conspiracy can be proved by direct or circumstantial evidence. It is essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement or actual meeting of two (or more) persons or proof of actual words of communication is not necessary to prove the offence of conspiracy.

II. Problems:

1. A Brahmin widow in the paroxysm of her grief proceed to the funeral pyre of (her) deceased husband with the declared intention of burning herself to death and becoming a sati. What is the liability of those who witnessed the tragedy?

Ans.: Instant problem refers to Abetment by Instigation. Sections 107-120 I.P.C. deal with Abetment.

The relevant case of the present problem is:

***R. vs. Mohit Pandey,* AIR 1959 SC 673.**

Abetment: 'To abet' means "to hold in doing something". If an offence is committed on the advice or instigation of another, it is called 'abetment'. The person, who abets is called 'abettor'. Abetment of an offence is punishable both in English Law and Indian Law. Section 107 I.P.C. defines abetment and Section 108 explains who is an abettor.

Abetment takes place in three ways, namely:

1. Abetment by Instigation;
2. Abetment by Conspiracy; and
3. Abetment by Intentional Aiding.

Abetment by Instigation: The word 'instigate' means urge forward or to provoke or to incite, urge or encourage to do an act. An inciter is one, who counsels, commands or advises the commission of a crime. A person is said to instigate another, when he actively suggests or stimulates him to do an act. Mere gestures directing a person to do an act amount to abetment.

The present problem is an instance of Abetment by Instigation. The relevant case on this point is:

R. vs. Mohit Pandey:

Facts: In this case, a woman prepared herself to be sati. Certain people followed her to the cremation ground and stood by her funeral pyre.

Judgment: The Court observed, "silent approval producing an effect of incitement, amounts to abetment by instigation".

In view of the facts and circumstances stated above and the decision of the Supreme Court in the above decided case, all the people, who witnessed the tragedy/sati are guilty of abetment by instigation and are liable.

2. 'A' instigates 'B' to murder 'C'. 'B' refused to do so. Is 'A' guilty of any offence. (S.V.U., November 1999, Part-C, Q.15, Marks: 20).

Ans.: Instant problem refers/relates to Abetment and attracts Explanation 2 to Section 108 I.P.C.

Section 107 to 120 of The Indian Penal Code, 1860 deal with Abetment.

Abetment: 'To abet' means "to hold in doing something". If an offence is committed on the advice or instigation of another, it is called 'abetment'. The person, who abets is called 'abettor'. Abetment of an offence is punishable both in English Law and Indian Law. Section 107 I.P.C. defines abetment and Section 108 explains who is an abettor.

Section 108 (Abettor): A person who abets another to commit an offence is called 'abettor'. Section 108 explains, as to who is an abettor. The abetment must be for commission of a criminal act.

Section 108 reads as follows: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation: To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

For instance, X instigates/encourages Y to kill Z. Whatever Y accepts or refuses to kill Z, X is guilty of abetting Y to kill Z.

In view of the above, it is not necessary that the act abetted should necessarily be committed. Therefore, A in the present case is guilty of abetting B to commit murder (of C).

3. 'A' instigates 'B' to murder 'C'. In pursuance of the instigation by 'A', 'B' stabs 'C'. 'C' recovers from the wound. Is 'A' liable?

Ans.: This problem refers to Abetment and attracts Explanation 2 to Section 108 I.P.C.

Sections 107-120 I.P.C. deal with Abetment. Section 107 defines Abetment, Section 108 says, who is an abettor and Section 109 prescribes punishment for abetment.

Abetment: 'To abet' means "to hold in doing something". If an offence is committed on the advice or instigation of another, it is called 'abetment'. The person, who abets is called 'abettor'. Abetment of an offence is punishable both in English Law and Indian Law.

Section 108 (Abettor): A person who abets another to commit an offence is called 'abettor'. Section 108 explains, as to who is an abettor. The abetment must be for commission of a criminal act.

Explanation: To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

For instance X instigates Y to murder Z. In pursuance of the instigation (by X), Y stabs Z. Z recovers from the wound/ injuries. X is guilty of abetting B to commit murder.

In view of the facts and circumstances stated above, A in the present problem is guilty to abetting B to commit murder and is liable.

P.S.: The student is suggested to read the illustrations under Section 108 (Abettor) on page No. 32, 33, 34 and 35 for the purpose of problems.

4. X, who is a citizen of India commits murder in Nepal. Can X be tried in India and sentenced to death penalty. (A.U., Model Q.P. Part-C, Q. No.1, Marks: 20)

Ans.: Yes, X can be tried and punished in India under Sections 3 and 4 of the Indian Penal Code, 1860. X can be sentenced to death penalty under Section 302 I.P.C. for the reasons furnished hereunder:

The present problem refers to "Jurisdiction of Indian Criminal Courts". It attracts Sections 3 and 4 of the Indian Penal Code, which deal with Extra-territorial Jurisdiction of the Indian Criminal Courts.

Jurisdiction of Criminal Courts: It means power conferred on the Courts by the Statute to try/decide disputes/cases. Jurisdiction of Criminal Court denotes "the power of a Criminal Court to try

a person for commission of a criminal act." It includes the power to try cases, award punishments, impose fines and also to grant the relief asked for.

The jurisdiction of Indian Criminal Courts is provided for under Sections 2 to 4 of the Code. The Jurisdiction is classified with reference to the following heads:

1. Personal Jurisdiction;
2. Territorial Jurisdiction;
   i) Intra-territorial Jurisdiction
   ii) Extra-territorial Jurisdiction.
3. Admirality Jurisdiction.

Section 2 refers to offences committed within the territory of India. Section 3 provides for punishment of offences committed beyond, but which by law may be tried within India. Section 4 deals with extension of the Code to Extra-territorial jurisdiction.

Extra-territorial Jurisdiction: It means power of the State to exercise jurisdiction beyond the territory of India (i.e., beyond the territorial limits).

Section 3 provides punishment for the offences committed beyond the territory of India, but which by law may be tried within India.

Section 3 says that, an Indian citizen may be prosecuted/ punished in India for committing any act, which is an offence under any Indian enactment. Similarly, Section 108 of the Code of Criminal Procedure, 1973, also provides that 'when an offence is committed outside India – (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person not being such citizen on any ship or aircraft registered in India. Such offence shall be inquired into and tried in India with previous sanction of the Central Government.

Section 4 provides for the extension of the Code to Extra-territorial offences. Section 4 says that, the provisions of this Code apply to any offence committed by—

1. Any citizen of India in any place without and beyond India;
2. Any person on any ship or aircraft registered in India wherever it may be.

Illustration:

'A', who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

In view of the facts and circumstances stated above, 'X' in the present problem can be tried and punished (sentenced to death) in India.

5. Mugambo, who is a citizen of India commits a murder in Uganda. Whether he can be tried and convicted of murder in any place in India? (A.U. 2001, Part-C, Q.No.4, Marks:20). (This problem is identical to problem No.4 above).

Ans.: Mugambo, who is a citizen of India can be tried under Sections 3 and 4 of the Indian Penal Code, 1860 and convicted of murder in India under Section 302 I.P.C. for the reasons stated below:

For Explanation: refer to the above problem (No.4).

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QUESTIONS AND HOW TO ANSWER

Lecture-I

INTRODUCTION

The student is suggested to read Introduction for overall idea about the subject.

Lecture-II

CRIME: MEANING, DEFINITION AND NATURE

Q) Crime. (S.V.U., November 1999, Part-A, Q.1, Marks: 4)

Ans.: Write the meaning of Crime and its definition by *Blackstone* and Indian Penal Code.

Q) Offence. (A.U. August, 2001, Part-A, Q.1, Marks: 4)

Ans.: Crime is also known as an offence. Write now, the meaning and definition of Crime

By *Blackstone* and I.P.C.

Q) Criminal Liability. (A.U., 2001, Part-A, Q.1, Marks: 4).

Ans.: It means "Liability under Criminal Law". Any person, who is found guilty of an offence

Is criminally liable and is punishable under the Indian Penal Code, 1860.

Now, write the meaning and definition of Crime in brief.

Q) Define Crime and distinguish it from Tort.(N.U., September 1995, Marks: 20).

Ans.: Write in detail, the meaning and definitions of Crime and then the difference Between the Crime and Tort in detail.

Lecture-III

ELEMENTS OF CRIME

Q) *Actus Reus.* (N.U., April 1999, Part-A, Q.1, Marks: 4).

Ans.: "*Actus Reus*" means "Physical Act". It is one of the essential elements.

ingredients of crime. The other elements are, *mens rea,* human being and injury.

Now, write in brief about "*Actus Reus*".

Q) *Mens rea.* (A.U., 2001, Part-A, Q.2, Marks: 4).

Ans.: *Mens rea* is an essential element of the concept of crime. The other elements are *Actus rea,* Human being and Injury.

Write now, about *Mens rea* in brief i.e., in one page from Lecture-III.

Q) Explain the doctrine of *mens rea* and discuss its liability in English and Indian

Criminal Law. (A.U., Model Q.P., Part-B, Q.1, Marks: 18).

Explain the doctrine of *mens rea* with the help of decided cases (A.U., 2001,

Part-B, Q.1, Marks: 18).

Mens rea is the very corner stone of Criminal Jurisprudence – Explain.

(O.U., October/November 2000, Marks: 20).

Define Crime and explain the significance of *mens rea* is an element of

Crime. (O.U., October/November 1999, Q.1, Marks: 20)

Ans.: *Mens rea* or Evil intent or the doctrine of *mens rea,* is an essential element of the concept of crime.

Write the meaning and definition of Crime in brief.

Elements of crime:

To constitute crime, the following ingredients/elements are to be satisfied:

1. *Actus Reus.*
2. *Mens rea*

3. Human being; and

4. Injury.

Write now about *Actus Reus,* human being and injury each in 2 or 3 lines and then about *mens rea* in detail covering English Law and Indian Law with cases (Case Law).

Lecture-IV

STAGES IN COMMISSION OF CRIME

Q) Inchoate Crime. (A.U., Model Q.P., Part-A, Q.1, Marks: 4).

Attempt to commit an offence. (A.U., 2001, Part-A, Q.7, Marks: 4).

Attempt. (A.U., January 2002, Part-A, Q.6, Marks: 4).

Ans.: Inchoate crime means "incomplete crime" or "attempt to commit an offence/crime." It is the third stage in commission of a crime. The first, second and fourth stages of crimes are, Intention, Preparation and Accomplishment respectively.

Now write about Attempt.

Q) Preparation. (S.V.U., November 1999, Part-A, Q.4, Marks: 4).

Ans.: The second stage in commission of a Crime is 'preparation'. The other i.e.,

The first, third and fourth stages of crime are, Intention, Attempt and Accomplishment respectively.

Q) Stages of Crime. (A.U., 2001, Part-A, Q.5, Marks: 4).

Ans.: Write in brief (one paragraph) the four stages in commission of crime.

Lecture-V

THEORIES AND KINDS OF PUNISHMENT

Q) Capital Punishment. (A.U., 2001, Part-A, Q.6, and N.U., April 1999, Part-A, Q.8, Marks: 4).

Ans.: Write about capital punishment in one page under kinds of punishment from Lecture-V

Q) Forfeiture of Property. (S.V.U., November 1999, Part-A, Q.6, Marks: 4).

Ans.: Write about 'Forfeiture of Property' under kinds of punishment from Lecture-V.

Q) Reformative Theory. (A.U., August 2001, Part-A, Q.8, and A.U., January 2002,

Part-A, Q.1, Marks: 4).

Ans.: It is one of the theories of Punishment. Write about the 'Reformative Theory' under theories of Punishment from Lecture-V.

Q) Theories of Punishment. (A.U., 2001, Part-A, Q.3, Marks: 4).

Ans.: Write about the 5 theories of Punishment in brief i.e., in one page.

Q) Give an account on the various theories and kinds of Punishment.

Ans.: Write in detail the theories and kinds of Punishment from Lecture-V.

Lecture-VI

JOINT LIABILITY

(Common Intention and Common Object)

Q) Explain the principles of Joint Liability. (S.V.U., November 1999, Part-B, Q.13, Marks: 18).

Ans.: Write the meaning of Joint Liability, Common Intention (Section 34) with

Barendra Kumar and Mahaboob Shah cases in brief and Common Object

(Section 149) with 2 or 3 cases in brief.

Q) Define Common Intention and distinguish it from common object. (A.U., August 2001,

Part-B, Q.2, Marks: 18).

Ans.: Write the meaning of Joint Liability, Common Intention and Common Object with

Case Law in brief and write the table containing the differences between Common

Intention and Common Object.

Q) Discuss the scope of joint liability for a criminal act based on the existence of Common

Intention. (A.U., November/December 2001, Part-B, Q.2, Marks: 18).

Ans.: Write about Joint Liability in detail and then Common Intention in detail with

Case law. Also write in brief (small paragraph) about Common Object.

Q) Explain the scope of 'Joint and Constructive Liability in Law of Crimes'.

(O.U., July 2000, Q.1, Marks: 20).

Ans.: Write about Joint Liability, Common Intention and Common Object in detail.

Lecture-VII

ABETMENT

Q) Abetment (.A., Model Q.P., Part-A, Q.5, S.V.U., November 1999, Part-A, Q.3, Marks: 4).

Ans.: Write in brief about Abetment (i.e., in one page).

Q) Define abetment and explain the various methods by which abetment is possible

And point out the punishment for abetment. (S.V.U., June 1995).

Ans.: Write the meaning and definition of abetment; methods by which abetment takes place viz., Abetment by Instigation, Abetment by Conspiracy and Abetment by Intentional Aididng; who is an abettor (i.e., meaning of abettor) and then punishment of Abetment (Section 109).

Q) Define Abetment and discuss in detail the liability of an abettor (O.U., July 2000,

Q.3, Marks: 20).

Ans.: Sections 107 to 120 of the Indian Penal Code, 1860 lay down the provisions relating to abetment. Section 107 defines Abetment, Section 108 says who is an abettor and Section 109 prescribes punishment for abetment.

Write now the meaning and definition of abetment, mention the modes of abetment in brief and then abettor and his liability in detail, Section 108 covering 5 explanations to Section 108 with illustrations.

Lecture-VIII

CRIMINAL CONSPIRACY

Q) What are the essential ingredients of the offence of Criminal Conspiracy? How does it differ from abetment by conspiracy. (A.U., December 1993).

Ans.: Write the meaning and definition of Criminal Conspiracy; Ingredients of

Conspiracy, meaning of Abetment and then the differences between

Abetment and Conspiracy.

Q) Explain Criminal Conspiracy and distinguish it from Abetment (O.U. October/

November 2000, Q.4, Marks: 20).

Ans.: Write the meaning and definition of Criminal Conspiracy and Abetment and then the differences between the two in detail.

Lecture-IX

VICARIOUS LIABILITY

Q) "Vicarious Liability is unknown to Criminal Law" – Comment. (S.V.U., October, 1993 & O.U., October, 1996).

Ans.: Write about Vicarious Liability in Criminal Law in detail with Hariprasada Rao and Srinivasamall cases and exceptions.

Lecture-X

JURISDICTION

Q) Explain the territorial extent of the application of Indian Penal Code to persons

(N.U., April 1999, Part-B, Q.11, Marks: 18).

Ans.: Write about the meaning of Jurisdiction, Jurisdiction of Criminal Courts in brief, classification of Jurisdiction, Personal Jurisdiction in detail with exceptions and also write in brief (one paragraph) about Territorial Jurisdiction (Intra and Extra-territorial).

Q) Explain the jurisdiction of Indian Criminal Courts for extra-territorial offences (O.U., October/November 2000, Q.2, Marks: 20) and What is the Jurisdiction of the Criminal Courts to punish persons according to the provisions of the Indian Penal Code for offences committed by them beyond the territory of India (O.U., October/ November 1999, Q.2, Marks: 20).

Ans.: Write about the meaning of Jurisdiction, Jurisdiction of Indian Criminal Courts, classification of Jurisdiction and then the Extra-territorial jurisdiction in detail.

LECTURE-XI

GENERAL EXCEPTIONS 'OR' GENERAL DEFENCES

Every person is presumed to be sane, unless the contrary is proved and is capable of knowing the nature and extent of the consequences of the act, he/she is doing. Such person, who is alleged to have committed an offence, if found guilty of the same is punishable under the Penal Code. A person, who is alleged to have committed an offence, is tried in a Criminal Court. The Court, before declaring him guilty of the offence and awarding punishment, gives him an opportunity to prove/establish the absence of intention/evil mind by establishing one of the defences provided for under the Code to get exemption from criminal liability. Such provisions, available to the accused to get exemption from criminal liability are called 'General Defences or General Exceptions'.

Chapter IV containing Sections 76 to 106 of Indian Penal Code deals with general exceptions. When a person is charged with an offence, the prosecution must prove the guilt on the part of the offender beyond all reasonable doubts. However, law provides certain defences to the accused to get exemption from criminal liability. This lecture covers such exceptions provided for in I.P.C. as detailed below:

1. Mistake (Sections 76 and 79).
2. Judicial Acts or Privileged Acts (Sections 77 and 78).
3. Accident (Section 80).
4. Necessity or Compulsion Necessity by Compulsion (Section 81).
5. Infancy (Sections 82 and 83).
6. Insanity (Section 84)
7. Drunkenness (Sections 85 and 86).
8. Consent (Sections 87 to 93);
9. Triviality (Section 95) and
10. Right of private defence (Sections 96 to 106).

1. MISTAKE (SECTIONS 76 AND 79)

The term 'Mistake' literally means "commission or omission of an act ignorantly or unintentionally causing injury or damage to another/others." It is an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract or a belief. In simple words, mistake is one of the defences available to the accused to get exemption from criminal liability. Sections 76 and 79 of the Indian Penal Code deal with the defence of mistake.

Mistake is of two kinds, namely:

1. Mistake of fact and
2. Mistake of law.

Mistake of Fact and Mistake of Law: The proposition is based on the maxim *'Ignorantia facti excusat, ignorantia juris non-excusat'*. This maxim means "ignorance of fact excuses, ignorance of law does not excuse." The mistake should be one of the fact, not of the law. In both the cases, the mistake may be due to ignorance, negligence, chance or even superstition. But, it must not be due to desire or pre-arrangement or pre-concert.

1. Mistake of Fact: Section 76 deals with 'Mistake of Fact'. It is an erroneous act, which takes place, when some fact, which really exists is unknown or some fact is supposed to exist, which really does not exist.

Nothing is an offence, which is done by a person, who is or who by reason of a mistake of fact (and not by a mistake of law) in good faith believes himself to be bound by law to do it. It is enshrined in the Common Law maxim *"Ignorantia facti excusat"* which means "Ignorance of fact excuses".

According to Section 76 of the Code, "Act done by a person bound, or by mistake of fact believing himself bound by law". It reads as follows:

"Nothing is an offence, which is done by a person, who is or who by reason of a mistake of fact, and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it."

Illustration 1: A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

Illustration 2: A, an officer of a Court of Justice being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Relevant Case Law:

***R. vs. Mrs. Talson* (1889, Q.B.D. 168):**

Facts: Mrs. Talson married Mr. Talson in September 1880. Her husband deserted her in 1881. Mr. Talson's whereabouts were unknown for more than 7 years. She made all enquiries about her husband and learnt from reliable sources that he died in a ship-wreck. Mrs. Talson got remarried in 1887 reasonably believing that her husband died. Some time after her remarriage, her first husband reappeared and charged her for bigamy.

Judgment: The Trial Court convicted her for one day. On appeal she was acquitted on the ground that she had no *mens rea.*

In this case, the act of Mrs. Talson in getting remarried under the belief of her husband's death, is a mistake of fact, is a defence. Hence, she was held not guilty for bigamy and was acquitted.

***R. vs. Prince* (1875) 2 CCR 154:**

Facts: Mr. Prince, the accused in the instant case, was in love with a girl Miss. Annie Philips, who was below the age of 16 years. The accused had taken away the unmarried girl from the lawful custody of her parents with an intention to marry her. He thought that she was above 16 years and the girl told him that she was 18 years old. The father of the girl lodged a complaint, alleging that Prince had illegally taken away his unmarried minor daughter below the age of 16 years. Prince was arrested and the criminal proceedings were instituted against him.

Decision/Judgment: The Court through *Blackburn J.,* rejected the contention/defence on the part of the accused that he *bona fide* believed and had reasonable ground for believing that the girl so taken by him was over sixteen, and held that the accused was guilty of misdemeanour (kidnapping) under Sec. 55 of the Offences Against Person Act, 1861.

The accused, though he had no *mens rea*, was convicted on the ground that his act of taking away an unmarried girl below 16 years from the lawful custody of her parent itself was an offence punishable irrespective of the proof of *mens rea.*

The question was, whether the mistake of fact was a part of the act prohibited by the statute. Though there is a mistake of fact, if it is prohibited by the statute, there is no defence. Hence, the accused (Prince) was convicted.

***Gopalia Kallalay vs. State* (1923) Bom.:** In this case, a Police Officer was directed to arrest a wrong doer against a warrant. The Police Officer even after making necessary enquiries wrongfully arrested the complainant, believing him in good faith as he was the wrong doer. The Court, allowing the defence of mistake of fact under Section 76, held the Police Officer not guilty of the wrongful arrest.

***Rex v. Levett,* [79 Eng. Rep. 1064 KB (1688)]:** The defendant instant case was awakened in the night by strange noise in his house, thinking that he was attacking a burglar. He ran his sword through a cabinet, where the intruder was hiding and killed a friend of his servant present by the latter's invitation. It was held not to be manslaughter for he did it ignorantly without intention of hurt to the deceased.

***Bhawoo Jivaji v. Mulli Dayal,* (1888) 12 Bom. 377:** In this case, the accused, a police constable saw the complainant carrying under his arm three pieces of cloth, which was suspected to be stolen. The constable arrested the accused as he did not allow him to inspect the cloth. The cloth was found not to be stolen and he prosecuted the constable for wrongful restraint and confinement. The Court observed that he was protected by Section 76 of the IPC because his mistake related to fact and was made in good faith.

2. Mistake of Law: The term 'law' used in this connection means, general law of the land. But the rule applies to all bye laws, rules and regulations, having the force of law. Ignorance of law is no excuse either in the case of a native or a foreigner. Everybody is presumed to know law of the land. Hence, Mistake of Law is no defence.

It is enshrined in the common law maxim "*Ignorantia juris non excusat*", which means "ignorance of law is no excuse". According to Section 79, "act done by a person justified or by mistake of fact believing himself justified by law." It reads as follows:

"Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."

Illustration: A sees Z commit what appears to A to be a murder. A, in the exercise to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self defence.

It is well settled that ignorance of law will not excuse from the consequence of guilt any person, who has a capacity to understand the law. The Indian Penal Code does not exempt an act done under a mistake of law from the operation of penal law.

Ingredients: To invoke the defence under Section 79, the following conditions are to be satisfied:

i) An act done by a person under a mistake of fact;

ii) Mistake must relate to fact and not to law;

iii) Mistake must be committed in good faith;

iv) The person doing the act is either justified by law or believes himself to be justified by law in doing an act.

***State of Orissa v. Khora Ghasi,* [1978 Cr.L.J. 1305 (Ori.)]: In this case,** the accused, in order to guard his maize field shot an arrow at a moving object under the *bona fide* belief that, it was a bear and in the process caused the death of a man who was hiding there. It was held that the accused could not be held liable for murder, as he is protected under Section 79 as well as Section 80 of the Indian Penal Code.

Emperor v. Jagmohan Thukral, **[AIR 1947 All. 99]:** In this case, the accused, while passing through a forest during a night, saw the eyes of an animal besides the bush and fired with his gun. But, two military officers in a military camp were wounded with the gun fire. The accused did not know about the military camp. The accused was charged under Section 307. But, the Court held the accused under the protection of Section 79 of the IPC.

Charandas v. State, **[AIR 1950 East Punjab 321]:** In this case, a constable of the National Volunteer Corps in compliance to the orders of a superior officer, fired a gun and shot a woman inside the tent in which gambling was going on and no violent mob had gathered there. The accused was held guilty of the offence of murder as the orders of the superior officer was illegal as there was no gathering of the violent mob.

***R. vs.d dbaily* (1800 Russ and Ry. 1):** The accused in the instant case was away from the coast of Africa, when a statute was passed by the British Parliament, and he had no knowledge as to the passing of the statute under which he was charged. The Court held him guilty, on the ground ignorance of law is no excuse.

***R. vs. Wheat & Stock* (1921) 2 K.B. 119:** The accused in the instant case, was an illiterate. He was informed in good faith that he had been granted divorce and hence, he got remarried. His first wife charged him for bigamy. The Court held him guilty of bigamy and convicted him on the ground that ignorance of law is no excuse.

Talson's case and Wheat's case are quite distinct from each other. In the former, there was a mistake of fact, which is excusable and hence Mrs. Talson was acquitted, while in the latter case, there was a mistake of law, which is not excusable, and hence, the accused was convicted.

In view of the above, it is clear that Mistake of Fact is a defence, while Mistake of Law is no defence.

2. JUDICIAL ACTS (SECTIONS 77 AND 78)

Sections 77 and 78 I.P.C. provide for exemption from Criminal Liability in respect of Judicial Acts i.e., the acts of Judges and

Courts. Section 77 protects the Judges from criminal prosecution and Section 78 protects the persons acting under the judgment or order of a Court.

Section 77 protects the acts of Judges, when acting judicially. It reads as follows:

"Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law."

Section 77 protects the judges from criminal process just as the Judicial Officers Protection Act, 1850 saves them from civil suits.

In ***Megh Raj v. Zakir,*** the Allahabad High Court held that 'no person acting judicially is liable for an act done or ordered to be done in the discharge of his official duty within the limits of his jurisdiction and in such a case the question of acting in good faith does not arise. The question of good faith is irrelevant only when a judge acts without jurisdiction, but when there is a jurisdiction, the immunity extends even to acts which constitute even an abuse of it.'

Ingredients: To invoke the defence of Judicial Act under Section 77, the following conditions are to be satisfied—

i) The act must have been done by a judge in discharge of his official duty,

ii) The act done must be within his jurisdiction, and

iii) The act must be performed in good faith.

Under Section 77 of the IPC, the Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives him; but also in cases where he, in good faith exceeds his jurisdiction and has no lawful powers. It protects Judges from criminal process just as the Judicial Officers Protection Act, 1850 and the Judges (Protection) Act, 1985 saves them from civil suits.

Judicial acts are not confined to acts done in the open Court, but also include orders passed in Chambers.

However, the privilege of Judges under Section 77 does not extend to acts when a Judge knowingly exceeds his authority or does something contrary to law. For instance, if a Judge assaults or abuses a man, he is as much liable as an ordinary man would be for his acts.

Acts done Pursuant to the Judgment or Order of the Court (Sec. 78): Section 78 refers to acts done pursuant to the judgement or order of the Court. Section 78 is wider than that is given to a Judge in Section 77. It affords protection to officers acting under the authority of a judgment or order of a Court of Justice. Section 78 reads as follows:

"Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction."

Section 78 is a corollary to Section 77 of the IPC. Section 78 of the IPC refers to acts done pursuant to the judgment or order of the Court. Section 78 is wider than the one given to a Judge in Section 77.

Section 78 of the IPC grants protection to officers acting under the authority or order of a Court of Law even if the Court had no jurisdiction or the order happened to be erroneous. For instance, a Magistrate who is authorised under Section 5 of the Gambling Act, 1867, to issue a search warrant, on credible information only, issues a warrant to arrest a person without any such information, the police officer, who arrests the man in pursuance of such an order is not liable for committing an offence. As the arrest was made under the direction of a Court, the police officer is protected from conviction in spite of the fact that the warrant was defective in law, and, consequently, illegal.

However, protection of Section 78 of the IPC cannot be extended to the execution of oral orders of a Judge. It also does not protect a person if he exceeds the power given to him by a Court. Apart from the protection given by these sections, the

Supreme Court in Delhi Judicial Service Association, ***Tis Hazari Court v. State of Gujarat,*** **[AIR 1991 SC 2176]** has issued certain directions in respect of arrest of judicial officers in the event of their being involved in a criminal case.

3. ACCIDENT (SECTION 80)

(Absence of *Mens Rea)*

Absence of *mens rea* is a good ground to invoke immunity/ exemption from criminal liability. In Accident, *mens rea* is absent Section 80 of the Indian Penal Code, 1860 provides for the 'Defence of Accident' to get exemption from criminal liability.

Accident is an event, which occurs all of a sudden and no man of ordinary prudence could anticipate/foresee/expect it. In common parlance, 'accident' means "an event that occurs without one's foresight or expectation and in the same way law also adopts it." Accident is not of itself a defence to a civil suit, unless it was only an accident but also a misfortune. 'Misfortune' means "an unfortunate incident, injury to another, while the misfortune causes injury as much to himself as to another unconnected with the act. Thus, accident and misfortune are good defence in Criminal Law.

Accident (Section 80): According to Section 80 of the Code, nothing is an offence, which is done by accident or misfortune–

a) Without any criminal intention or knowledge;

b) In the doing of a lawful act-

i) by lawful manner;

ii) by lawful means and

iii) with proper care and caution.

To invoke the defence of accident under Section 80, the act must have been done without any criminal intention or criminal knowledge. Secondly, the act alleged against the accused must be lawful. Otherwise, it is not excusable.

State of Orissa vs. Khoraghasi, **1978 Cr.LJ 105 Ori.:** In this case, the accused, a tribal in a forest, with a *bona fide* intention shot an arrow at an animal. But, a person (human being) was

hit by the arrow and died. The Orissa High Court allowing the defence of accident under Section 80, acquitted the accused.

***Tunda vs. rex,* AIR 1950 All. 95:** In this case, A and B were friends. During the wrestling boat, B received head injuries and died, when he was thrown by A. It was held that the injuries were accidental and not intentional and A was protected under Section 80.

***Shakhir Khan v. Crown,* [AIR 1931 Lah. 54]: In this case,** a big party consisting of some hundred men went out for shooting pigs and when a boar rushed towards the accused he fired at her, but he missed the boar and the shot struck the leg of a member of the party which resulted in his death. It was held that the death was caused by accident and was not the result of rash or negligent shooting.

***Jageshwar v. Emperor,* [AIR 1924 Oudh. 228]:** The accused in this case was beating a person with his fists, when the latter's wife with a two month child on her shoulder interfered. The accused hit the woman but the blow struck the child on its head. The baby died from the effect of the blow. It was held that although the child was hit by accident, the accused was not doing a lawful act in a lawful manner by lawful means and therefore, the defence under Section 80 of IPC was not available to him.

In the ***Bhupendrasinha A. Chudasama v. State of Gujarat,* [AIR 1998 SCC 603]:** The accused and the deceased were police constable and head constable. They were posted to protect a dam site. The accused killed his colleague in the night by firing at a close range without knowing the identity of his target. The accused pleaded the defence of Section 80. The Supreme Court confirmed the conviction given by the High Court under Section 302, and held that the accused acted without proper care and caution, and that the act of accused could not come under an accident or misfortune nor was it a lawful act.

4. NECESSITY AND COMPULSION (SECTION 81)
(Compulsion or Necessity or Compulsion by Necessity)

Section 81 of the Indian Penal Code provides for the defence of Necessity and Compulsion. There are certain circumstances in

which a person is put to the threat of two evils or dangerous situations and it is inevitable/unavoidable for him to face one of two. In such a situation, he is left with no other alternative except to choose/invite the lesser danger rather than the greater. Then, the law justifies his action and protects him by exempting him from criminal liability as a consequence of such action. Such protection or exemption from criminal liability is explained under the "*Doctrine of Necessity and Compulsion or Jus necessitates*". It is enshrined in the maxim *"Necessitas non habet legem"*, which means "Necessity knows no law".

Act likely to cause harm, but done without criminal intent, and to prevent other harm (Section 81): Nothing is an offence merely by reasons of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation: It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations:

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty or an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the good intention and in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Essentials: To invoke the defence of Necessity under Section 81, the following ingredients are to be satisfied.

1. The act must have been done under good faith; and
2. There must not be *mens rea* (absence of *mens rea*).

Circumstances or cases where necessity may be pleaded as a defence: Section 81 of the IPC stresses three conditions to claim exemptions from criminal responsibility, namely:-

i) Self-defence, and presentation of violence;

ii) Prevention of harm to the accused at the expense of an innocent person;

iii) Choice of evils affecting person other than the accused.

The relevant leading English Case on this point is –

***R. vs. Dudley and Stephens,* 1884 14 Q.B.D. 273:** In this case, three Seamen namely Dudley, Stephens and Brooks and a cabin boy of 18 years were the crew of an English Vessel. While prosecuting voyage on high seas, due to ship-wreck (ship strikes against a rock or hill resulting in an accident), the three seamen and the boy escaped and were put into open boat. On 20th day, when they had no food for eight days and no water for five days, Dudley and Stephens killed the boy and fed on the flesh and blood for four days to survive themselves. On the fourth day, they were picked up by a passing vessel. After reaching the shore, they were prosecuted and tried for the murder of the boy. The accused pleaded the defence of 'necessity' to get exemption from the criminal liability.

The Privy Council held the accused guilty of murder and convicted them on the ground –

i) self preservation is not an absolute necessity;

ii) no man has a right to take another's life to preserve his own and

iii) there is no necessity that justifies homicide.

***United States v. Holmes,* [26 Fed Case 360 (1842)]:** The accused in the instant case was a member of the crew of a boat after a shipwreck. Fearing that the boat would sink, he, under the order of the mate, threw 16 mate passengers over-board. The accused though not convicted for murder was convicted for manslaughter and was sentenced to six months' imprisonment with hard labour.

***Maleverger v. Spinke,* [1537 Dyer at 36(b) ER at 81]:** In this case, to stop the spreading of fire, the accused pulled down a hut. The accused was found not guilty of offence and was excused.

***R v. Mouse,* [1608 (77) ER 1341]:** In this case, a bargeman threw the goods of the plaintiff out of a barge in order to lighten the barge in a storm and for the safety of the passengers. In an action of trespass, it was held that not only the bargeman but any passenger would be justified in taking any such action for the safety of the passengers, though the bargeman had overloaded the barge.

5. INFANCY (SECTIONS 82 AND 83)

(Doli Incapax)

In Criminal Law, children or *juvenile* delinquents (juvenile = child; delinquent = criminal/offender) are placed in a privileged position as they are immune (exempted) from criminal liability under certain circumstances. For instance, a child below the age of 7 years is totally exempted from criminal liability, and the criminal liability of a child between the age of 8 and 12 years is subject to proof of *mens rea.* Further, juvenile delinquents/young offenders are tried in Juvenile Courts, which are specially designed for the trial of juvenile delinquents (According to Section 2(12) of the Juvenile Justice Act, 2015 Child means "a person who has not completed eighteen years of age").

The present topic deals with the defence of Infancy, which provides a child, exemption from criminal liability. The word 'infancy' means "childhood". An infant is a child below the age

of legal maturity/minority/18 years. Sections 82 and 83 of the Indian Penal Code, 1860 exempt the children from criminal liability.

Section 82 provides complete exemption to a child below the age of seven years. It is presumed that the child below the age of seven years cannot have *mens rea* to commit an offence. If an adult abets a child below the age of seven years to commit a crime, the adult will be liable as an abettor, Section 82 reads as follows:

"Nothing is an offence, which is done by a child under the age of seven years."

Blackstone has explained the reason for exempting infants from criminal liability in the following words:

Infancy is a defect of the understanding, and infants under the age of discretion ought not to be punished by any criminal prosecution whatsoever.

Section 82 of the Code completely makes an infant below 7 years of age immune from criminal liability, since a child below this age is considered *doli incapax* in law. That is to say, a child under such an age cannot form the necessary intention to constitute a crime since he possesses no adequate discretion or understanding at this age for his deeds. Thus, if a child below 7 years of age is charged for committing a crime, the fact that he was at that time below 7 years of age is *ipso facto* an answer to the prosecution. The scope of the immunity granted under this section is wide enough to exempt a child not only from prosecution for offences under the Penal Code, but also from offences under the special as well as local laws, as explained under section 40 of the Code.

Marsh v. Loader: In this case, the defendant caught a child, while stealing a piece of wood from his premises, and gave into custody. Since the child was under the age of responsibility (i.e., 7 years) he was discharged.

Qualified Immunity to a Child between the age of 7 and 12 years (Sec. 83): According to Section 83, a child above the age of seven years and below the age of twelve years is exempted from criminal liability subject to the condition that such child does not have sufficient maturity of mind. Such child is called "*Doli*

Incapax" i.e., incapable of committing the offence. However, the presumption should be proved by producing evidence.

Section 83 reads as follows:

"Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

Section 83 of the Code considers a child above seven and under twelve years *doli in compax* to certain extent depending upon a variety of circumstances. In India, a child between 7 to 12 years of age is qualified to avail the defence of *doli in capax* if it is proved that he has not attained sufficient maturity of understanding to comprehend the nature and consequences of his conduct on that occasion.

Ingredients: To invoke the defence under Section 83, the following conditions are to be satisfied:

i) An act done by a child above 7 years but under 12 years of age.

ii) The child must not have attained sufficient maturity of understanding to judge of the nature and consequence of his conduct.

iii) Incapacity must exist at the time of commission of the act.

Section 83 deals with the cases of qualified immunity because a child above 7 but below 12 years of age is presumed to be possessed with maturity of understanding and capacity to commit a crime. However, the presumption is rebuttable and the burden to rebut this presumption lies upon the defendant. A child between 7 to 12 years of age is qualified to avail the defiance of *doli incapax* if it is proved that he has not attained sufficient maturity of understanding to understand the nature and consequences of his conduct on that occasion.

Relevant Case Law:

Hiralal v. State of Bihar: In this case, the boy participated in a concerted action and used a sharp weapon for a murderous attack on the accused. In the absence of evidence leading about the boy's feeble understanding of his actions the defence under section 83 was not allowed.

***Ulla Mahapatra*, (1950) Cut 293:** The accused in the instant case was a boy of over eleven years but below 12 years picked up a knife and threatened to cut the deceased to pieces and did actually kill him. It was held that his action could lead to only one inference, namely that he did what he intended to do, and that he knew, all along, that one below inflicted with a knife would effectuate his intention. He was sent to a Reformatory School for 5 years.

***R.V. Krishna* [1883 (6) Mad. 373],** a child of 9 years of age stole a necklace worth Rs.2-8-0 and sold it to B the accused for five annas. Evidence at the trial showed that the child had attained sufficient maturity of understanding to judge of the nature and consequences of his conduct. Therefore the child would be guilty of theft and B would be guilty of receiving stolen property under section 411 I.P. Code. In a case, a girl of 10 years married again during the life-time of her husband, the marriage was negotiated and caused to be performed by her mother. The girl was held not to have attained sufficient maturity of understanding to judge of the nature and consequences of her conduct on the second marriage.

***R.V. Mariamutha* [9 Cr. LJ. 392 (Mad.)],** a girl aged about 10 years picked up a silver button and gave it to her mother. The girl was not held liable for theft because the circumstances did not disclose that she had attained sufficient maturity of understanding to judge of the nature of her act.

***A v. DPP* [1991 (COD) 442 (DC)]:** In this case, an eleven year old child was prosecuted for throwing a brick at a police vehicle and then running away. The Court observed that the justices were not entitled to conclude from the child's appearance that he was normal in respect of incurring criminal responsibility.

The test is whether the child knew that what he was doing was seriously wrong and went beyond childish mischief. Running away was not by itself sufficient to rebut the presumption of *doli incapax*. A naughty child would run away from a parent or teacher even if what he had done was not criminal.

Heeralal v. State of Bihar, **[AIR 1977 SC 2236]:** The accused in this case was a child of eleven years old, threatened the deceased that he would cut him to pieces. Accordingly, the accused killed him with knife. In the prosecution, the defence was pleaded under Section 83 of the Code. The Trial Court convicted the child and held that the boy was not entitled to get the immunity under Section 83 because his words, gesture, assault, keeping a knife in his pocket, stabbing the deceased etc. showed that the child had attained sufficient maturity of understanding to judge the wrongful act and also the consequences of his act. The Supreme Court upheld the conviction by the lower Court on the ground that the accused child had sufficient maturity of mind to understand the nature and consequences of the act, while stabbing the deceased.

6. INSANITY OR MENTAL ABNORMALITY (SECTION 84)

Meaning: The word 'Insane' means "not sane or of unsound mind". Insanity means "mental disorder or mental abnormality or disease of the mind". An insane or mentally disabled (mad) is of unsound mind. If an insane person commits a crime, he/she is exempted from the criminal liability under Section 84 I.P.C. on the ground that he/she is unable to know what is right and what is wrong and is incapable of understanding the nature and extent of consequences of the act he/she is doing. However, it is very difficult to prove such mental abnormality, while committing the offence.

Stephen in his Digest of Criminal Law states that "No act is a crime, if the person, who does it, is at the same time, when it is done prevented either by defective mental power or by any disease affecting his mind from knowing the nature of quality of the act, or from knowing that the act is wrong."

Basis: The basis for exempting an insane from criminal liability is that such a person is not of sound mind or "*non compos mentis*". That is to say he does not know the nature of the act he is doing or what is either wrong or contrary to law.

Insanity (Section 84): The law relating to the 'Defence of Insanity' is laid down under Section 84 of the Indian Penal Code, 1860, which runs as follows:

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Law of Insanity (Mc. Naughten case and Rules): The law relating to insanity is formulated on the famous Mc. Naughten's Rules enunciated by the House of Lords, after its sensational judgement in the Mc. Naughten's Case.

***R. vs. Mc. Naughten* (1843) 4 St. Tr. (NS) 847:**

Facts: Daniel Mc. Naughten, the accused in the instant case murdered Mr. Drummond, the Private Secretary of Sir Robert Peel, the then Prime Minister of England, thinking by confusion that he (Mr. Drummond) was Sir Robert Peel. He was tried for murder.

On behalf of the accused, the Defence Counsel pleaded that the accused due to insanity, was not able to know that he was violating the laws of God and Man. It was established that the accused lost the power of control, while committing the offence, as he was labouring a delusion and medical report was produced to that effect.

Judgment: The House of Lords through *Tindol, C.J.*, acquitted Mc. Naughten on the ground of insanity.

The acquittal of Mc. Naughten gave room for great controversy/ criticism and became a serious debate before the House of Lords. After a critical/detailed study on the law of insanity, the House of Lords invited all the fifteen Law Lords. Five questions were given to them with a view to formulate the law of insanity on the basis of the replies/answers/opinions given by them. The replies/ opinions given by the Judges/Law Lords came to be known as

"Mc. Naughten' Rules or Mc. Naughten' Principles of Insanity."

Mc. Naughten' Principles of Insanity (Mc. Naughten' Rules):

1. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to the satisfaction of a jury. (In simple words, unless contrary is proved, every man is of sound mind, and he knows that he is responsible for his crimes).
2. To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did not know it, that he did not know he was doing what was wrong. (In simple words, to plead the defence of insanity, the accused has to prove that, at the time of committing the act, he was labouring such a defect from disease of the mind so that he could not know the nature, extent and consequences of the act he was doing).
3. As to his knowledge of the wrongfulness of the act, the Judges said, "If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable." (In simple words, if the accused was conscious that the act was one which he ought not to do, and at the same time the act was contrary to law of the land, he was punishable).
4. It depends upon the nature of delusion. If the person, (accused) under the influence of his delusion, supposes another attempting to take away his life (kill him), and kills that man (as he supposes), in self defence, he would be exempted from punishment. If the delusion was that the deceased has inflicted a serious injury to his character or fortune and he killed him as revenge for such supposed injury, he would be liable for punishment. (In simple, the accused is not punishable, if he kills the diseased in a

delusion (*suspision*) that the diseased was attempting to kill him. The accused is punishable if he kills the diseased in a delusion that the diseased was attempting to inflict serious injury).

5. A medical witness, who is present during the trial cannot be asked to give opinion as to the state of mind of the accused since he (medical witness) was ignorant of the same at the time of commission of the act (offence). (In simple words, a medical witness, who has not seen the accused before trial should not be asked to give his opinion as to the state of accused's mind).

The above rules are still in practice and binding in England. In India also, these principles are incorporated under Section 84 of the Indian Penal Code, 1860.

Ingredients: Insanity or unsoundness itself is not a defence. To plead insanity as defence, the following conditions are to be satisfied.

i) The accused is of unsound mind;

ii) That he does not know the nature of the act he was doing and

iii) That he is doing what is either wrong or contrary to law.

To plead the defence of insanity, the burden of proof is on the shoulders of the accused.

Burden of Proof: The burden of proving the plea of insanity rests on the accused and that onus can be discharged by producing evidence as to his conduct shortly prior to the offence and his conduct at the time of immediately afterwards, and by evidence of his mental condition and other relevant facts.

The Supreme Court in—

Dahyabhai Thakker v. State of Gujarat, **[AIR 1964 SC 1563]**: laid down the principles of the Doctrine of Burden of Proof in the context of the plea of insanity in the following propositions:

1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite

mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense as laid down by Section 84 of the IPC; the accused may rebut it by placing before the Court all the relevant evidence oral, documentary or circumstantial but the burden of proof upon him is not higher than that rests upon a party to civil proceedings.

3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence including *mens rea* of the accused and in that case the Court would be entitled to acquit on the ground that the general burden of proof resting on the prosecution was not discharged.

Types of Insane Persons: Insane persons may be categorised under the following heads namely:

1. **Lunatic :** A Lunatic is one, who is mentally deranged due to mental strain or other personal experience.
2. **Idiot :** An idiot is one, who lost his mental power:
3. One due to disease and
4. Drunken or intoxicated person.

The first two are the permanent forms of insanity, while the latter two come under temporary form. The last one i.e., insanity caused by drunkenness is studied separately under Sections 85 and 86 I.P.C.

Relevant Case Law:

***Ashiruddin v. The King*, (1949):** In this case, the Calcutta High Court allowed the defence of insanity under section 84 IPC on the ground that the accused had sacrificed his son of five years,

while acting under the delusion of a dream, believing it to be right. The accused had dreamt that he was commanded by someone in paradise to sacrifice his son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He, then went straight to his uncle but, finding a chaukidar (watch man) nearby, took his uncle to a tank some distance away and slowly related the story. On these facts, it was held by a Bench of the Calcutta High Court that the case of insanity under section 84, IPC was made out.

It was held in this case that to enable an accused to obtain the benefit of section 84, he should be able to establish any one of the following three elements, viz.,

(1) that the nature of the act was not known to the accused, or

(2) that the act was not known by him to be contrary to law, or

(3) that the act was not known by him to be wrong.

On the above facts, the Bench held that the third element was established by the accused, namely, that the accused did not know that the act was wrong. This was obvious on the ground that the accused was labouring under a belief that his dream was a reality.

***Veluswamy vs. State*, 1985 Cri. C.J. 1981:** In this case, the accused in the instant case, killed his father with a grinding stone as he refused to give him money. The Court denied the defence of insanity on the ground that the accused was in full sense and committed the offence as a grudge against his father.

***Elankari Sunkari vs. State of A.P.*, 1989 Cri. L.J. 97:** In this case, the accused killed his son by stabbing and started shouting and dancing that he had killed his son. Later, he went home with blood stained clothes and threatened to kill the other family members. The Court held that he was suffering from insanity and acquitted him.

***Shrikant Anand Rao Bhosale v. State of Maharashtra*, AIR 2002 SC 3399:** The appellant was a police constable. He and Surekha were married in the year 1987. On the date of the incident,

they were living in police quarters along with their daughter. On the morning of 24th April, 1994, there was a quarrel between husband and wife. While Surekha was washing clothes in the bathroom, the appellant hit her with grinding stone on her head. The appellant was immediately taken by the police to the quarter guard. Surekha was taken to the hospital where she was found dead. After usual investigation the appellant was charged for the offence of murder of his wife. Insanity of the appellant at the time of commission of crime was pleaded in his defence. The appellant has a family history as his father was suffering from psychiatric illness. Cause of ailment was not known. Heredity plays a part. Accused was being treated for unsoundness of mind since 1992 and was diagnosed as suffering from paranoid schizophrenia. Within a short span, soon after the incident, from 27th June to 5th December 1994, he had to be taken for treatment of illness to hospital 25 times. The accused was under regular treatment for the mental ailment. The motive of killing of wife was weak being that she opposed the idea of resigning the job of a Police Constable. After killing his wife in day light, he made no attempt to hide or run away.

It was held that keeping in view the totality of facts and circumstances in the light of the evidence on record the accused was suffering from paranoid schizophrenia. The unsoundness of mind before and after the incident would be a relevant fact. From the circumstances of the case an inference can reasonably be drawn that the accused was under a delusion at the relevant time. He was under an attack of ailment. The anger theory on which reliance has been placed by the prosecution cannot be ruled out under schizophrenia attack. Having regard to the nature of burden on the accused, the accused can be said to have proved the existence of circumstances as required by section 105 of the Evidence Act so as to get the benefit of section 84, Indian Penal Code. In the circumstances, it cannot be said that the crime was committed as a result of extreme fit of anger. A reasonable doubt can be raised that at the time of commission of the crime, the accused was incapable of knowing the nature of the act by reason of unsoundness of mind and thus he would be entitled to the benefit of section 84, Indian Penal Code. Hence accused was not liable for the offence.

In a recent case of ***Hari singh gond v. State of Madhya Pradesh*, AIR 2009 SC 31,** the accused was convicted under section 302, IPC read with section 201, IPC and sentenced to life imprisonment, which was confirmed by the High Court of Madhya Pradesh for beating to death Hari Lal (deceased) with a stick several times due to which he died. Thereafter, the accused put some grains on fire, which were lying in that room, due to which not only the house caught the fire but Hari Lal was also burnt.

Rejecting the defence plea of unsoundness of mind under section 84, IPC on the ground of unusual behaviour of the accused; as reported by the witnesses, the Supreme Court held that the standard to be applied for deciding applicability of section 84 is, whether according to the ordinary standard, adopted by reasonable man, the act was right or wrong. The mere fact that an accused is conceited (exaggerated opinion) odd traceable (peculiar person) and his brain is not quite all right or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and Will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short interval, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, (strange) cannot be sufficient to attract the application of this section. It was held on the facts of the case that section 84 had no application.

Legal and Medical Insanity: Insanity may be categorised under two heads namely – i) Legal Insanity; and ii) Medical Insanity. The former is a wider concept, while the latter is a narrower concept. The Courts are concerned with Legal Insanity. Medical insanity is solely dependent on medical grounds while legal insanity depends on the factors required to be proved in a court of law to enable the accused to be acquitted of the charge. In other words, legal insanity furnishes a good ground of defence from criminal liability while medical insanity does not. In order to establish legal insanity the necessary elements as provided by section 84 of the Indian Penal Code must be proved. If there are sufficient medical grounds to hold that a person is suffering from insanity, it is a case of medical insanity. In other words, the existence of medical insanity is to be proved with the help of

medical evidence. Legal insanity (unsoundness of mind) for the purposes of section 84, Indian Penal Code means that the defence must prove that at the time of commission of crime with which the accused is charged, because of unsoundness of mind, he did not know the nature of his act or that he was doing what was either wrong or contrary to law. The incapacity of the accused must be caused by some disease of mind and must exist at the time of commission of crime. Medically a person may be certified sane or insane as the case may be, but legally he will be held insane (of unsound mind) only if he successfully proves the requirements of the law under section 84, Indian Penal Code, which will entitle him to be acquitted of the charge. If he fails to prove that, the law presumes him sane at the time of commission of the crime by him, even though medically he may have been insane at that time.

7. DRUNKENNESS OR INTOXICATION (SECTIONS 85 AND 86)

Section 85 and 86 of the Indian Penal Code, 1860 deal with the law relating to drunkenness or intoxication, which run as follows:

Section 85: Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Section 86: In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Drunkenness or intoxication is the result of consuming drinks or drugs. Intoxicated persons behave abnormally. Such persons may not have the rational thinking and do not know the nature of the

acts, they are doing and do not know their effects and legal consequences. All England Report in its Annual Review 1889 observes, "Alcoholism may constitute a disease provided it has damaged the brain to an extent as to grossly impair the ability to make rational judgments and emotional responses. A killing attributable to alcoholism is one thing but a killing attributable to the taking of alcohol is quite another and a line must be drawn between the two though it may be a fine one in some cases. The taking of alcohol inevitably impairs judgment and the ability to control the emotion because of the effect it has on the brain but the transient effects of alcohol cannot be accounted for a 'disease'.

A drunken or intoxicated person is incapable of having required mental element to commit an offence. Now, the question is, how far drunkenness or intoxication is allowed as a defence to get exemption from Criminal Liability?

The early common law made no concession to drunkenness. In ***Reninger v. Fogossa,*** **[1551 KB 75 Eng. Rep. 1]**, the Court approved the death sentence for a homicide committed in extreme intoxication. Later, it is recognised that *delirium tremens* caused by drinking produces certain degree of madness, incapacity to know the nature of the act, whether it is right or wrong. Hence, under certain unavoidable circumstances, the act of a heavily drunken person is excused from criminal responsibility. The intoxication in order to be available as a defence must be of that degree and extent as renders the defendant practically an automation and the burden of proof of lack of capacity to entertain the required intent is upon the defendant.

Sections 85 and 86 of the Indian Penal Code, 1860 deal with the law relating to intoxication thus;

Drunkenness is the species of madness for which the man is to blame. Drunkenness is of two kinds namely:

1. Voluntary drunkenness; and
2. Involuntary drunkenness.

Voluntary drunkenness is no defence for the commission of a crime. Intoxication is a voluntary species of madness, which is in party's power to abstain from, and he must answer for it.

But, where drunkenness is involuntary, as when a man is forced to drink or when he is made drunk through stratagem or the fraud of others, or through ignorance or when any intoxicant is administered to him without his knowledge or against his will, his criminal act will be judged with reference to his mental condition at the time the act was committed. Such a case is exactly on the same footing as unsoundness of mind. The words used in sections 84 and 85 are identical and all the considerations that arise in case of insanity also arise in cases of involuntary drunkenness. When a person gets intoxicated voluntarily i.e., by taking drinks or drugs with full knowledge, it is called 'Voluntary Drunkenness'. If he gets intoxicated without his knowledge i.e., through fraud or stratagem of others, and thereby becomes incapable of understanding the nature and consequences of the act he was doing, it is called 'Involuntary Drunkenness'.

Ingredients: To invoke the defence of involuntary intoxication under Section 85, the following conditions are to be satisfied—

(i) incapable of knowing the nature of the act, or

(ii) that he was doing what was either wrong or contrary to law and

(iii) that the thing which intoxicated him was given to him without his knowledge or against his will.

According to Section 85 of the Penal Code, voluntary intoxication is no excuse for the commission of a crime and hence it cannot be pleaded as a defence. But, involuntary intoxication can be excused under certain circumstances and hence, it can be pleaded as a defence under Section 85 of the Indian Penal Code as it affords the same protection to an accused as section 84 to a person of unsound mind. In order to claim exemption from criminal liability under section 85 the accused has to establish that:

(1) at the time of doing the act by reason of intoxication he was incapable of knowing—

(i) the nature of the act; or

(ii) that he was doing what was either wrong or contrary to law; and

(2) that the thing which intoxicated him was administered to him without his knowledge or against his will.

The relevant leading English Case on this point is:

***Director of public prosecution vs. beard*, (1920) A.C. 479–**

Facts: Beard was a night watchman. He caught a girl of thirteen years old to have carnal knowledge (to seduce/rape her). The girl cried and tried to escape. He put a cloth gag in her mouth to prevent cries; and placed his hand over her mouth and thumb on her throat. The girl died by suffocation. He pleaded the defence of intoxication, as he was in drunken state at the time of committing the offence. The Trial Court convicted him for murder. But, the Court of appeal reduced the sentence to *manslaughter.* However, the House of Lords restored the conviction for murder, and laid down the following points on the 'Law of Intoxication'.

1. The insanity produced by drunkenness is the defence to the crime charged.
2. The evidence of drunkenness is taken into consideration, to determine, whether the accused had an intent to commit the offence.
3. Mere establishment of the fact that a man's mind was so affected by drink, affords no protection.

Excessive drunkenness is not a defence. The law of drunkenness has been very nicely summarised in the case of—

***Basudev vs. State of Pepsu*, AIR 1956 SC 488:** The accused in the instant case, was a retired military officer. He was charged with murder of a 15 year old boy. The accused fired at the boy in a marriage lunch for refusing to give way enabling him to occupy a seat. It was found that he was drunk but was not so much under its influence. The Trial Court sentenced him for life imprisonment and the same was upheld by the Pepsu High Court. Then, the appellant went to the Supreme Court by special leave to appeal. The Supreme Court following the decision in Beard's case, held that the offence was reduced from murder to the culpable homicide not accounting to murder under second part of Section 304 I.P.C.

While rejecting the plea of the accused to allow him the benefit of section 86 and reduce the charge from murder to culpable homicide, the Supreme Court laid down the following rules for guidance, viz.,

i. The absence of understanding of the nature and consequences of an act, whether produced by drunkenness or otherwise, is a defence to the crime charged;

ii. The evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime, should be taken into consideration with other proved facts in order to determine whether or not he had this intent;

iii. The evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was effected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

8. CONSENT (SECTIONS 87-91)

The word 'Consent' is not defined in the Code. It literally means "agreed to" comply or expressing willingness or giving acceptance. Two or more persons are said to consent, when they agree upon the same thing in the same sense and at the same time (Section 13, Indian Contract Act, 1872). To plead the consent as a defence, it must be free. A consent is said to be free consent, if it is not obtained by the flaws in consent viz., coercion, undue influence, fraud, misrepresentation, mistake etc. It may be express or implied; oral or in writing.

According to Stephen, "consent means a consent freely given by a rational and sober person so situated as to be able to form a rational opinion upon the matter to which he consents. Consent is said to be given freely, when it is not produced by force, fraud or threat of whatever nature."

Kenny observes that consent must be given freely and by a sane and sober person, so situated as to be able to form a reasonable opinion upon the matter to which the consent is given.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent (Section 87): According to Section 87, any harm other than death or grievous hurt even though intended or known by the doer to be likely to be caused will not be an offence under the following conditions.

i) If the act is done without any intention of causing death or grievous hurt;

ii) Harm is caused to any person with his consent;

iii) Person giving consent is above 18 years of age; and

iv) The consent given may be expressed or implied.

Section 87 is based on the well-known Latin maxim "*Volenti non fit injuria*", which means "no act is actionable, if it is expressly or impliedly assented/consented". In other words, wrong/injury suffered voluntarily is not actionable. Again this maxim is based on two principles:

i) That every person is the best judge of his own interest; and

ii) No man will consent to what he thinks harmful to himself.

Injuries suffered in the games viz., boxing, football etc., are protected under this Section. For instance, in *Poonai Fattemah*, where the accused, who professed to be a snake charmer, persuaded the deceased to allow himself to be bitten by a poisonous snake, inducing him to believe that he had the power to protect him from any harm. The accused, however, was not able to save the deceased from the effect of the snake bite. It was held that the deceased's consent did not excuse the accused from criminal liability. However, it did serve to mitigate the rigour of liability and the accused was held guilty of culpable homicide not amounting to murder under section 304 read with Exception 5 to section 300 IPC. Similarly, in suicide pacts the survivor is held guilty for culpable homicide not amounting to murder (Section 304, IPC).

Consent is a good defence to sex offences in general. But if once it is proved in a case of rape that the age of the girl in question was below 16 years, her consent becomes wholly irrelevant and the accused is liable for the offence as if no consent were obtained.

As regards offences against property, consent of the owner of the property is complete defence both for civil and criminal actions.

***R. v. Wilson*:** In this case, the accused *Wilson* was asked by his wife to tattoo his initials on her breasts. He refused, but she persuaded him to burn his initials with a hot knife at her buttocks. The wife was not only a willing partner, but she was the instigator of the activity. Her doctor who had discovered it during a routine examination reported the matter to the police. Wilson was charged with an assault occasioning actual bodily harm.

Dismissing the charge, the Court of Appeal held that tattooing is a perfectly lawful activity so long as it is carried out with the consent of an adult, even though actual bodily harm is deliberately inflicted.

A consent will not exonerate a man from criminal liability if in the course of a fight with deadly weapons, one of the participants is killed. It was apparent from the very nature of the act that it would result in death or grievous bodily injury to someone. Moreover, such types of games are prohibited by law. One cannot do by an agreement what the law says shall not be done.

The House of Lords in ***Regina v. Croper,* (2009)** held that consent accorded by the complainant to sexual touching because complainant was unable to refuse due to an irrational fear of what was happening to her will not exonerate the defendant with the charge of the intentionally touching the complainant under section 30(1) of the Sexual Offences Act, 2003.

Act not intended to cause death, done by consent in good faith for person's benefit (Section 88): Section 88 protects any harm other than intentional death, if the act is done by the doer in good faith for the benefit of the consenting person. The consenting person must be atleast 12 years of age (Section 90). This Section protects the doctors and surgeons, who with the consent of the patient undertaken to perform surgical operation, which is likely to cause death. The authors of the Code have explained the reasons for such a rule in the following words:

In general, we have made no distinction between cases in which a man causes an effect designedly, and cases in which he causes it with a knowledge that he is likely to cause it... But there is, as it appears to us, a class of cases in which it is absolutely necessary to make a distinction. It is often the wisest thing that a man can do to expose his life to a great hazard. It is often the greatest service that can be rendered to him to do that may very probably cause his death. He may labour under a cruel and wasting malady which is certain to shorten his life, and which renders his life, while it lasts, useless to others and a torment to himself... We do not conceive that it would be expedient to punish the surgeon who would perform the operation, though by performing it, he might cause death, not intending to cause death but knowing himself to be likely to cause it...

***Emperor vs. Surajbali*, 7 Cr. L.J. 306:** In this case, the accused, a doctor in good faith for the benefit of his patient, operated the eye of the patient for cataract. It resulted in loss of eye sight. In an action against the accused, it was held that the act of the accused was not an offence and was acquitted under Section 88.

Act done in good faith for benefit of child or insane person, by or by consent of guardian (Section 89): Section 89 provides protection in respect of harm caused to a person/child below 12 years of age or a person of unsound mind, by his guardian himself or other person with the consent given by the guardian. To invoke protection under Section 89, the act must be done in good faith for the benefit of the child or the person of unsound mind. Section 89 runs as follows—

"Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:- Provided,—

Provisos:-

First:- That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly:- That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly:- That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly:- That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration:

A, in good faith, for his child's benefit without his child's consent has his child, cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

Consent known to be given under fear or misconception (Section 90): Consent is not defined in the Code. But, according to Section 90, consent is not said to be a consent if it is given-

i) Under fear of injury or misconception of fact; or

ii) By a person of unsound mind or by a drunken person provided he is unable to understand the nature and consequences of that to which he consents; or

iii) By a person under twelve years of age.

Section 90 runs as follows—

A consent is not such a consent as is intended by any Section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person:- If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child:- Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Section 90 of the Code instead of giving a positive definition of the word 'consent', defines it in negative terms. It states what is not considered consent in law. Consent, in order to secure the benefit of exemptions from criminal liability, must be a free consent. The section goes on to explain that a consent is not a free consent in the law and is no answer to a charge of crime, if it has been procured by putting a man under the fear of an injury, coercion, undue influence or under a misconception of fact, or the consent is given by a person who, by reason of unsoundness of mind or intoxication or immaturity of age (i.e., a child below 12 years of age), is incapable of understanding the nature and consequences of the act to which the consent was accorded. Similarly, consent given under a misconception of fact will not absolve a man from criminal liability.

***Dasrath Paswan vs. State of Bihar*, 1958 Cr.L.J. 548:** In this case, the accused under utter distress wanted to put an end to his life by committing suicide. But, his wife wanted/asked/ consented him to kill her first and then do so (commit suicide). Accordingly he killed her first and was caught before committing the suicide. It was held that the consent of the accused's wife was a free consent within the meaning of Exception 5 to Section 300 I.P.C.

***Emperor vs. Poonai Fattemah*, (1896) 12 WR (Cr) 7:** In this case, the accused, a snake charmer compelled the deceased to allow (to give consent) to be bitten by a poisonous snake. The accused also induced him to believe that he had magical power to protect/prevent harm from the snake bite. Believing the words of the accused, the deceased allowed to be bitten by the snake. But, the accused could not save his life and was convicted.

Section 91 is an exception to Sections 87, 88 and 89. Sections 92 and 93 deal with constructive consent. Section 92 deals with "act done in good faith for the benefit of a person without consent."

E.g.: A surgeon performs operation to a child as there was no time to obtain the consent of his parent or guardian. The surgeon's act is protected under Section 92. Section 93 protects communication made in good faith.

Exclusion of acts which are offences independently of harm caused (Section 91): The exceptions in Sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration: Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent (Section 92): Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided,-

Provisos:-

First:- That this exception shall not extend to the intentional causing of death; or the attempting to cause death;

Secondly:- That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly:- That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly:- That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations:

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation inspite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in the house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation: Mere pecuniary benefit is not benefit within the meaning of Sections 88, 89 and 92.

Communication made in good faith (Section 93): No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration: A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats (Section 94): Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:-

Provided the person doing that act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1: A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2: A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

9. TRIVIAL ACTS (SECTION 95)

Section 95 deals with acts causing slight harm. The section provides an exception from criminal liability in respect of those acts which, though they fall within the letter of the law, are yet not within its spirit, and are considered as innocent. For instance, it is theft to dip a pen in another man's ink, or to take a sheet of paper from another's drawer, causing hurt to a man by pressing against him while getting into a railway compartment, or into a theatre hall; it is defamation to call a man a liar and the like, but the law will not take notice of such acts. If such acts were punishable all free movement and intercourse in society would come

to an end and men would not be able to live together freely. A man would be subjected to criminal trial for every petty act which might take place in his life and thus, he would be exposed to all the troubles and worries of criminal vagaries. Thus, the law will not take notice of trifles, i.e., *de mimis non curat lex*; the parties are allowed to settle such petty matters between themselves outside the court.

Act causing slight harm (Section 95): Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense any temper would complain of such harm.

The following acts are covered by this section:

(1) Where a person takes pods almost valueless from a tree standing on Government waste land.

(2) Where the accused committed theft of a cheque of no value.

(3) Where the plaintiff complained of the harm caused to his reputation by the imputation that he was travelling with a wrong ticket.

The following acts are not trivial in nature:-

(1) Where a blow was given across the chest with an umbrella by a dismissed policeman to a District Superintendent of Police because his application to reconsider his case was rejected.

(2) Where the accused tore up a paper which showed a money debt due from him to the prosecutor though it was unstamped, and therefore not a legal security.

(3) Where a respectable man is taken by the ear.

(4) Where an advocate while cross-examining a witness used filthy words exhibiting disrespect or indignity towards the mother of the witness.

State of Maharashtra v. Taherbhai: The two accused in the instant case were found selling hard boiled sugar confectionery

in contravention of the rules framed under the Prevention of Food Adulteration Act. Section 95 was pleaded in defence. It was held that Section 95 is not applicable to any offence under the Prevention of Food Adulteration Act. A slight deviation from the standard fixed under the rule is not going to cause slight harm as contemplated under Section 95.

Bichittranand v. State of Orissa: In this case, the accused had stored for sale, mustard oil of a quality slightly inferior to the purity standard fixed by the rules. It was urged that the variation was only slight and the appellant should be given the benefit of section 95. The plea was rejected and the conviction was confirmed.

State of Karnataka v. Labo Medicals: In this case, the respondent was prosecuted under the Essential Commodities Act, read with the Drugs (Price Control) Order. It was pleaded that the amount involved was only about 60 paise and as such the benefit of section 95 be given. Rejecting this plea the High Court observed that if this was an offence of the classical type, say for example theft of a few paise, we should have certainly conceded to the submission made by the learned counsel. We are dealing with a socio-economic offence. We are concerned with only one bill issued by the firm. Several other bills might have escaped from detection. Hence the offence cannot be considered a trifle one.

10. RIGHT OF PRIVATE DEFENCE (SECTIONS 96 – 106)

Section 96 to 106 of the Indian Penal Code, 1860 provide for various provisions relating to the Right of Private Defence. Section 96 deals with things done in private defence. Section 97 provides for Right of private defence of the body and of property. Section 98 deals with Right of private defence against the act of a person of unsound mind, etc. Section 99 deals with acts against which there is no right of private defence; extent to which the right may be exercised. Section 100 provides for when the right of private defence of the body extends to causing death. Section 101 deals with when such right extends to causing any harm other than death. Section 102 deals with commencement and continuance of the right of private defence of the body. Section 103 provides

for when the right of private defence of property extends to causing death. Section 104 deals with when such right extends to causing any harm other than death. Section 105 provides for commencement and continuance of the right of private defence of property. Section 106 deals with right of private defence against a deadly assault when there is risk of harm to innocent person.

Private Defence: Meaning and Nature: Law confers right on every individual to defend his life, liberty and property, when he is confronted with an imminent danger or unlawful aggression. Right of Private Defence means "committing an offence in exercise of one's own right to defend/protect his life, liberty or property."

E.g.: 'A' attacks 'B' to kill him. B, in order to save himself, kills A. Here B is said to have exercised his right to private defence. B can plead the defence of Right of Private Defence to get exemption from criminal liability. The right of private defence is designed with a social purpose and should be exercised within certain limits and hence, it is recognised in every civilised system of law.

The law relating to private defence is based on the following principles:

1. Every one has the right to defend one's own body and property and also to defend other's body and property at the time of immediate necessity.
2. The right cannot be exercised to cause harm to another as revenge. In other words, the right of private defence can be used as a shield and not as a sword.

Basis or Reasons for the Defences: According to Mayne, the whole law of self-defence rests on the following four propositions:

(1) Society undertakes, and, in the great majority of cases, is able to protect private persons against unlawful attacks upon their person and property;

(2) Where the aid of society can be obtained, it must be resorted to;

(3) Where the aid of society cannot be obtained, individual may do everything necessary to protect himself;

(4) The violence used must be in proportion to the injury to be averted and must not be employed for the gratification of vindictive or malicious feelings.

However, there are two important limits on the right of private defence. The first is that the right of private defence can under no circumstances justify anything, which strictly is no defence but an offence. Secondly, the right cannot be claimed when you have yourself courted the attack.

Things done in Private Defence (Section 96): Section 96 of the Code, declares that "Nothing is an offence, which is done in the exercise of the right of private defence". This Section does not define the right of private defence, but simply declares the right. The right under Section 96 is available against the person or persons from whom imminent danger to life or property is apprehended.

This general rule is available against an act, which is an offence under the Code. An aggressor cannot claim the right of self defence. Further, the defence is not available, when there is a free fight between the parties.

***Gurudatta Mal vs. State of U.P.*, AIR 1965 SC 257:** In this case, the accused and deceased consisted of huge number of members. The accused party killed some members of the deceased party. The accused pleaded the defence of the right of private defence. The Trial Court acquitted them under the benefit of doubt. On appeal, the Supreme Court reversed the decision of the Trial Court.

The right of private defence has been elaborately discussed in Sections 97 to 106 from two aspects, namely, defence of the body and defence of property. Sections 97, 98 and 99 are of a general nature and deal with both aspects of right to the defence of body and property. On the other hand, (i) Sections 100, 101, 102 and 106 are concerned with defence of body and (ii) Sections 103, 104 and 105 with defence of property.

Right of Private Defence of the Body (Sections 97-102, 104 and 108): According to Section 97 I.P.C. every person has a right to defend his own body or property or another against any

offence affecting the human body. In Indian law, even a stranger may defend the person or property of another. But in English Law there must exist some special relationship to defend the person or property of another. But, in English law, there must exist some special relationship to defend the person or property of another.

E.g.: Master and servant, husband and wife etc.

The right exercised under Section 97 is subject to certain restrictions under Section 99. The aggressor has no right of private defence. There is no right of private defence in case of free fight (free fight means sudden fight).

Relevant Case Law:

***R. vs. rose*, (1884) 15 Cox cc 540:** In this case, the accused shot and killed his father, whom he believed to be cutting the throat of his mother. The accused was allowed the right of private defence to protect his mother against his father's act.

***Gopi vs. King* – 10 Pat 821:** In this case, a Sub-Inspector proposed a search contrary to law (Section 165 Cr.P.C). The accused pushed him out to prevent the search. The accused was held not guilty of any offence since the Sub-Inspector did not act in good faith.

Right to Defend Person and Property (Section 97): Section 97 provides that the right of private defence, is available to defend person as well as property. Section 97 defines what the right of private defence is. The right of private defence is of two kinds:

i) Private defence of person or body against offences affecting the human body;

ii) Private defence of property against theft, mischief, robbery or criminal trespass or attempt to commit any of these offences.

Every person has a right, subject to the restrictions contained in section 99, to defend—

First:- His own body, and the body of any other person, against any offence affecting the human body;

Secondly:- The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Ishwar Singh v. State of Rajasthan: In this case, the apex court held that in order to invoke the right of defence to person or property, the accused must prove that he was placed in such a dangerous situation that to protect himself he had to use reasonable force. In the impugned case the field was in possession of the accused and the other party went there to take possession of it. There was a fight between the two parties which resulted in the death of one and caused injuries to several members of both the parties.

The question was as to whether the accused had used reasonable force as necessary to protect their possession over the field and also to protect their persons.

The High Court presumed that since the accused were in possession of the field and the complainants' party had come to take possession of the same, the initiative of beating must have been taken by them, and they were justified in using reasonable force as necessary to protect their possession over the field and also to protect their persons.

Sections 97 to 102 and 106 deal with the former i.e., the right of private defence of the body, while Sections 97 to 99, 103 to 105 deal with the latter i.e., the right of private defence of property.

Right to defend against the act of Insane, Intoxicate etc. (Section 98): Section 98 speaks about the right of private defence against the act of a person of unsound mind etc. Section 98 provides that what may not be offences because of the age, physical or mental incapacity of the aggressor is no bar to the exercise of private defence. Hence, the right can be exercised even against an infant, insane or intoxicated person or one suffering under misconception of facts. It runs as follows:

When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations:

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Limitations on the Right of Private Defence (Section 99): Section 99 lays down the limitations on the exercise of the right of private defence. The first two clauses of this Section state that there is no right of private defence against an act done, or attempted to be done by or by the direction of a public servant. The public servant must have done the act in good faith and under the colour of his office, even though that act may not be justifiable by law.

Section 99 reads as follows—

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised:- The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1:- A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2:- A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states that authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

***Dhara Singh vs. Emperor*, (1947 Lah):** The police entered the accused's house in the night to arrest him. The accused did not recognise/identify them as police and fired at them. It was held that the accused had a right of private defence.

If public servant has a different uniform his position would be known to others and in such circumstance there is no right of private defence. Like public servants, those who are acting under the direction of a public servant are also protected. The private person who is acting under the direction of a public servant must state his authority. Third clause lays down that there is no right of private defence if there is time to have recourse to the protection of public authorities. As per the fourth clause more harm than what is necessary should not be inflicted while exercising the right of private defence. There is no hard and fast rule which determines the amount of harm which can be caused.

***Krishna vs. State of Madras*, 1968 (2) STC 258:** In this case the accused, a trader abducted and assaulted the Sales Tax Officer, who inspected the shop and attempted to seize the accounts. The accused pleaded the defence of the right of private defence. He held the accused guilty and did not allow him the defence.

Right of Private Defence, when death may be caused (Section 100): Section 100 of the Code provides for the circumstances under which the right of private defence extends to voluntarily causing the death of a person. However, this right is subject to restrictions/limitations as laid down under Section 99 of the Code. Section 100 reads as follows:

The right of private defence of body extends, under the restrictions mentioned in the last preceding Section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

First:- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly:- Such an assault as may reasonably cause the apprehension that grevious hurt will otherwise be the consequence of such assault;

Thirdly:- An assault with the intention of committing rape;

Fourthly:- An assault with the intention of gratifying unnatural lust;

Fifthly:- An assault with the intention of kidnapping or abducting;

Sixthly:- An assault with the intention or wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

[*Seventhly*:- An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act].

***Karamat Hussain vs. Emperor*, AIR 1938 Lah. 269:** In this case, the accused, in order to save/protect his sister from merciless beating by her husband intervened and killed him. It was held that the accused was entitled to the right of private defence under such circumstances.

***R. vs. Rose* (1884) 15 Cox cc 540:** In this case, the accused shot and killed his father, whom he believed to be cutting the throat of his mother. The accused was allowed the right of private defence to protect his mother against his father's act.

***Gopi vs. King*, 10 Pat. 821:** In this case, a Sub-Inspector proposed a search contrary to law (Section 165 Cr.P.C.). The accused pushed him out to prevent the search. The accused was held not guilty of any offence since the Sub-Inspector did not act in good faith.

When harm other than death may be caused (Section 101): Section 101 of the Penal Code provides that in the absence of the circumstances laid down in Section 100, the right of private defence is limited to causing of any harm other than death. This right, again, is subject to the exceptions already dealt with under Section 99.

Section 101 reads as follows—

If the offence be not of any of the descriptions enumerated in the last preceding Section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body (Section 102): Section 102 says that the right of private defence commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence. The right continues as long as the apprehension of danger continues.

Section 102 runs as follows—

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as apprehension of danger to the body continues.

***Deo Narain v. State of Uttar Pradesh*:** In this case, the Supreme Court held that the right of private defence is a 'preventive and not a punitive right'. If after sustaining serious injuries there is no apprehension of further danger to the body, obviously the right of private defence would not be available. But to say that the 'appellant could only claim the right to use force after he had

sustained assault is a complete misunderstanding of the law embodied in section 102, IPC. It depends on the circumstances of the case.

When the Right of Private Defence of Property extends to causing death (Sec. 103): Section 103 justifies killing the aggressor and exercising the right of private defence in cases of robbery, house-breaking by night, theft, mischief or house trespass, causing apprehension of death or grievous hurt.

Section 103 runs as follows—

The right of private defence of property extends under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit, which occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First:- Robbery;

Secondly:- House-breaking by night;

Thirdly:- Michief by fire committed on any building tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly:- Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When the Right of Private Defence to Property extends to causing any harm other than death (Section 104): Section 104 says that if the theft, mischief or criminal trespass does not answer the description given in Section 103, then the right of private defence of property does not extend to causing death, but it extends, subject again to Section 99, to voluntarily causing any harm other than death. So a pick-pocket in exercise of right of private defence cannot be killed.

Section 104 runs as follows—

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private

defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding Section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property (Sec. 105):

Section 105 says that the right of private defence of property commences. It runs as follows—

The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has affected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house trespass which has been begun by such house-breaking continues.

Right of private defence against a deadly assault when there is risk of harm to innocent person (Section 106): Section 106 provides for the right of private defence against deadly assault, when there is a risk of harm to innocent person. Section 106 runs as follows—

If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right

without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration: 'A' is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CASE COMMENT

I. Discuss the facts and law laid down in the following cases:

1. *R. vs. Dudley and Stephens*, 1884 14 Q.B.D. 273.

Ans: Instant case refers to Section 81 of the Indian Penal Code, 1860, which deals with the 'Defence of Necessity and Compulsion or Necessity by Compulsion'. It is one of the general defences as provided for under Section 76 to 106 of the Code (viz. Mistake, Judicial Acts, Accident, Necessity, Infancy, Insanity, Drunkenness, Consent, Right or Private Defence etc.) to get exemption from Criminal Liability.

Section 81 of the Indian Penal Code provides for the defence of Necessity and Compulsion. There are certain circumstances in which a person is put to the threat of two evils or dangerous situations and it is inevitable/unavoidable for him to face one of two. In such a situation, he is left with no other alternative except to choose/invite the lesser danger rather than the greater. Then, the law justifies his action and protects him by exempting him from criminal liability as a consequence of such action. Such protection or exemption from criminal liability is explained under the "Doctrine of Necessity and Compulsion or Just necessitates." It is enshrined in the maxim "*Necessitas on habet legem*", which means "Necessity knows no laws".

Essentials: To invoke the defence of Necessity under Section 81, the following ingredients are to be satisfied:

1. The act must have been done under good faith; and

2. There must not be *mens rea* (absence of *mens rea).*

The defence of Necessity and Compulsion under Section 81 is well explained in the present case as detailed below:

***R. vs. Dudley and Stephens*, 1884 14 Q.B.D. 273:**

Facts: Three Seamen namely Dudley, Stephens and Brooks and a cabin boy of 18 years were the crew of an English Vessel. While prosecuting voyage on high seas, due to ship-wreck (ship strikes against a rock or hill resulting in an accident), the three

seamen and the boy escaped and were put into open boat. On 20th day, when they had no food for eight days and no water for five days, Dudley and Stephens killed the boy and fed on the flesh and blood for four days to survive themselves. On the fourth day, they were picked up by a passing vessel. After reaching the shore, they were prosecuted and tried for the murder of the boy. The accused pleaded the defence of 'necessity' to get exemption from the criminal liability.

Judgment: The Privy Council held the accused guilty of murder and convicted them on the ground –

i) self preservation is not an absolute necessity;

ii) no man has a right to take another's life to preserve his own; and

iii) there is no necessity that justifies homicide.

Principle: "To preserve one's life generally speaking is a duty, but it may be the plainest and the highest duty to sacrifice it. It is not correct, therefore, to say that there is any absolute or unqualified necessity, to preserve one's life. It is not needful to point out the lawful danger of admitting the principle, which has been contended for.

2. *R. vs. Mc. Naughten*, (1843) 3 St. Tr. (NS) 847:

Ans: Instant case refers to the law relating to the "Defence of Insanity", as provided under Section 84.

Insanity (Section 84): The law relating to the "Defence of Insanity is laid down under Section 84 of the Indian Penal Code, 1860, which runs as follows:

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Insanity – Meaning: The word 'Insane' means "not sane or of unsound mind". Insanity means "mental disorder or mental abnormality or disease of the mind". An insane or mentally disabled (mad) is of unsound mind. If an insane person commits a crime,

he/she is exempted from the criminal liability under Section 84 I.P.C. on the ground that he/she is unable to know what is right and what is wrong and is incapable of understanding the nature and extent of consequences of the act he/she is doing. However, it is very difficult to prove such mental abnormality, while committing the offence.

The present (Mc. Naughten's) Case forms basis for the law relating to the defence of Insanity as detailed below:

***R. vs. Naughten* (1843) 4 St. Tr. (NS) 847**

Facts: Daniel Mc. Naughten, the accused in the instant case murdered Mr. Drummond, the Private Secretary of Sir Robert Peel, the then Prime Minister of England, thinking by confusion that he (Mr. Drummond) was Sir Robert Peel. He was tried for murder.

On behalf of the accused, the Defence Counsel pleaded that the accused due to insanity, was not able to know that he was violating the laws of God and Man. It was established that the accused lost the power of control, while committing the offence, as he was labouring a delusion and medical report was produced to that effect.

Judgment: The House of Lords through *Tindol, C.J.,* acquitted Mc. Naughten on the ground of insanity.

The acquittal of Mc. Naughten have room for great controversy/ criticism and became a serious debate before the House of Lords. After a critical/detailed study on law of insanity, the House of Lords invited all the fifteen Law Lords. Five questions were given to them with a view to formulate the law of insanity on the basis of the replies/answers/opinions given by them. The replies/opinions given by the Judges/Law Lords came to be known as **"Mc. Naughten' Rules or Mc. Naughten' Principles of Insanity."**

Mc. Naughten' Principles of Insanity (Mc. Naughten' Rules):

1. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to the satisfaction of a jury. (In simple words, unless contrary is proved, every man is of sound mind, and he knows that he is responsible for his crimes).

2. To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did not know it, that he did not know he was doing what was wrong. (In simple words, to plead the defence of insanity, the accused has to prove that, at the time of committing the act, he was labouring such a defect from disease of the mind so that he could not know the nature, extent and consequences of the act he was doing).

3. As to his knowledge of the wrongfulness of the act, the Judges said, "If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable." (In simple words, if the accused was conscious that the act was one which he ought not to do, and at the same time the act was contrary to law of the land, he was punishable).

4. It depends upon the nature of delusion. If the person, (accused) under the influence of his delusion, supposes another attempting to take away his life (kill him), and kills that man (as he supposes), in self defence, he would be exempt from punishment. If the delusion was that the deceased has inflicted a serious injury to his character or fortune and he killed him as revenge for such supposed injury, he would be liable for punishment. (In simple, the accused is not punishable if he kills the diseased in a delusion (*surpision*) that the diseased was attempting to kill him. The accused is punishable if he kills the diseased in a delusion that the diseased was attempting to inflict serious injury).

5. A medical witness who is present during the trial cannot be asked to give opinion as to the state of mind of the accused since he (medical witness) was ignorant of the same at the time of commission of the act (offence). (In simple words, a medical witness, who has not seen the

accused before trial should not be asked to give his opinion as to the state of accused's mind).

The above rules are still in practice and binding in England. In India also, these principles are incorporated under Section 84 of the Indian Penal Code.

Ingredients: Insanity or unsoundness itself is not a defence. To plead insanity as defence, the following conditions are to be satisfied.

i) The accused is of unsound mind;

ii) That he does not know the nature of the act he was doing; and

iii) That he is doing what is either wrong or contrary to law.

To plead the defence of insanity, the burden of proof is on the shoulders of the accused.

3. *Director of Public Prosecution vs. Beard*, (1920) A.C. 479:

Ans: Instant case refers to the Defence of Drunkenness or Intoxication as provided for under Sections 85 and 86 of the Indian Penal Code, 1860.

Drunkenness or Intoxication is the result of consuming drinks or drugs. A drunken or intoxicated person is incapable of having required mental element to commit an offence. Now, the question is, how far drunkenness or intoxication is allowed as a defence to get exemption from Criminal Liability?

Drunkenness is the species of madness for which the man is to blame. Drunkenness is of two kinds namely:

1. Voluntary drunkenness; and

2. Involuntary drunkenness.

When a person gets intoxicated voluntarily i.e., by taking drinks or drugs with full knowledge, it is called 'Voluntary Drunkenness'. If he gets intoxicated without his knowledge i.e., through fraud or stratagem of others, and thereby becomes incapable of understanding the nature and consequences of the act he was doing, it is called 'Involuntary Drunkenness'.

According to Section 85 of the Penal Code, voluntary intoxication is no excuse for the commission of a crime and hence it cannot be pleaded as a defence. But, involuntary intoxication can be excused under certain circumstances and hence, it can be pleaded as a defence. The leading English Case on this point is:

***Director of public prosecution vs. Beard*, (1920) A.C. 479–**

Facts: Beard was a night watchman. He caught a girl of thirteen years old to have carnal knowledge (to seduce/rape her). The girl cried and tried to escape. He put a cloth gag in her mouth to prevent cries; and placed his hand over her mouth and thumb on her throat. The girl died by suffocation. He pleaded the defence of intoxication, as he was in drunken state at the time of committing the offence. The Trial Court convicted him for murder. But, the Court of appeal reduced the sentence to *manslaughter*. However, the House of Lords restored the conviction for murder, and laid down the following points on the 'Law of Intoxication'.

1. The insanity produced by drunkenness is the defence to the crime charged.
2. The evidence of drunkenness is taken into consideration, to determine, whether the accused had an intent to commit the offence.
3. Mere establishment of the fact that a man's mind was so affected by drink, affords no protection.

II. Problems:

1. A and B are fighting and B's wife with a baby on her shoulders intervenes. A struck the lady but it fell on the infant who is killed is A liable?

Ans: Instant problem attracts Section 80 of the Indian Penal Code, 1860, which provides for the defence of Accident.

The relevant case of the present problem is: *Jogeswar vs. Emperor*, 24, Cri.L.J. 789:

Section 80 of the Code exempts a person/accused from criminal liability. The reason is, in accident, *mens rea* is absent. The law relates to the defence of Accident and the relevant leading cases are detailed below:

Accident: Meaning and Essentials: Accident is an event, which occurs all of a sudden and no man of ordinary prudence could anticipate/foresee/expect it. In common parlance, 'accident' means "an event that occurs without one's foresight or expectation and in the same way law also adopts it." Accident is not of itself a defence to a civil suit, unless it was only an accident but also a misfortune. 'Misfortune' means "an unfortunate incident, injury to another, while the misfortune causes injury as much to himself as to another unconnected with the act. Thus, accident and misfortune are good defence in Criminal Law.

Accident (Section 80): According to Section 80 of the Code, nothing is an offence, which is done by accident or misfortune–

a) Without any criminal intention or knowledge;

b) In the doing of a lawful act-

i) by lawful manner;

ii) by lawful means; and

iii) with proper care and caution.

To invoke the defence of accident under Section 80, the act must have been done without any criminal intention or criminal knowledge. Secondly, the act alleged against the accused must be lawful. Otherwise, it is not excusable.

Jogeswar vs. Emperor, 24 Cr.L.J. 789:

Facts: A and B were fighting and a lady carrying an infant in her arms tried to intervene. A aimed a blow at the woman but it fell on the infant who died.

Judgment: It was held that A was not protected under Section 80 as he was doing an unlawful act when the child was killed accidentally.

In view of the facts and circumstances stated above, A in the present problem is not entitled to the protection under Section 80 and is liable.

2. 'Z' is carried by a tiger and 'A' in good faith intending to save the life of Z fires at the tiger but his shot kills Z. Is A liable?

Ans: Instant problem attracts Section 80 of the Indian Penal Code, 1860, which provides for the 'Defence of Accident'.

A in the present problem is not liable for the death of Z as his (A's) act is purely an outcome of an accident, which is protected under Section 80 of the Code. Write about 'Accident' as defence as above i.e., in previous problem.

3. A received a divine order in his sleep to sacrifice his child of five years of age. He carries on the order and kills his son. Is he liable? And,

A on being command in his dream by some one in paradise to sacrifice his son, took his six year old child to mosque and killed him there by thrusting a knife in the child's throat and thereafter went straight to his uncle but seeing a chowkidar, there he took his uncle aside and told him in a low voice what he has done. Is 'A' guilty of any offence? (A.U. Model Question Paper, Part-C, Q.No. 3).

Ans: Instant problem refers to the defence of insanity as provided under Section 84 of the Indian Penal Code, 1860.

The relevant case of the present problem is: ***Ashiruddin vs. Emperor*, AIR 1949 Cal. 182.**

Insanity: Meaning: The word 'Insane' means "not sane or of unsound mind". Insanity means "mental disorder or mental abnormality or disease of the mind". An insane or mentally disabled (mad) is of unsound mind. If an insane person commits a crime, he/she is exempted from the criminal liability under Section 84 I.P.C. on the ground that he/she is unable to know what is right and what is wrong and is incapable of understanding the nature and extent of consequences of the act he/she is doing. However, it is very difficult to prove such mental abnormality, while committing the offence.

Law of Insanity: The law relating to insanity or the principles of Insanity are formulated on the Mc. Naughten's Rules, which were laid down by the House of Lords in English after its sensational judgement in Mc. Naughten's Case. These principles of insanity are incorporated under Section 84 of the Penal Code, which runs as follows:

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Ingredients:

Insanity or unsoundness itself is not a defence. To plead insanity as defence, the following conditions are to be satisfied.

i) The accused is of unsound mind;

ii) That he does not know the nature of the act he was doing; and

iii) That he is doing what is either wrong or contrary to law.

To plead the defence of insanity, the burden of proof is on the shoulders of the accused.

The relevant case of the present problem is:

***Ashiruddin vs. King Emperor,* AIR 1949 Cal. 182:**

Facts: In this case, the accused saw a dream in the night in which he received a divine command to sacrifice his own son of five years of age. In pursuant to this on the next morning he killed the son by thrusting a knife in his throat near a mosque.

Judgment: It was held that accused made the sacrifice believing it to be right. He was clearly of unsound mind and acted under the delusion of his dream.

In view of the facts and circumstances stated above A in the present problem is entitled to the defence of Insanity under Section 84 and is not liable.

4. A, a Kabiraj, cuts the piles of a patient who dies after operation. – Is A liable?

Ans: Instant problem refers to "Consent as a Defence". Sections 87 to 93 of the Indian Penal Code lay down the provisions relating to the consent as a defence to get exemption from criminal liability.

The relevant case of the instant problem is: ***Emperor vs. Sukroo Kabiraj*, 14 Cal. 566.**

Consent: Meaning: The word 'Consent' is not defined in the Code. It literally means "agreed to" comply or expressing willingness or giving acceptance. Two or more persons are said to consent, when they agree upon the same thing in the same sense and at the same time (Section 13, Indian Contract Act, 1872). To plead the consent as a defence, it must be free. A consent is said to be free consent, if it is not obtained by the flaws in consent viz., coercion, undue influence, fraud, misrepresentation, mistake etc. It may be express or implied; oral or in writing.

Emperor vs. Sukroo Kabiraj –

In this case, the accused Kabiraj had performed an operation for cutting out the internal piles of a patient by an ordinary knife. The patient died. In an action against the accused, it was held that the accused (Kabiraj) is not skilled in the Science of Surgery and is not entitled to the protection under Section 88 and is liable.

In view of facts and circumstances stated above, A in the instant problem is liable.

QUESTIONS AND HOW TO ANSWER

Lecture-XI

I. Short Questions:

Q) Right of Private Defence in Criminal Law (A.U. Model Q.P. Part-A, Q.6; N.U. April 99,

Part-A, Q.2, Marks: 4).

Ans.: Write about Private Defence in brief (one page).

Q) Mistake (A.U., August 2001, Part-A, Q.10, Marks: 4).

Ans.: Write about Mistake, Mistake of Fact and Mistake of Law in one page.

Q) Mistake of Fact (A.U., January 2002, Part-A, Q.5, Marks: 4).

Ans.: Write the meaning of Mistake, mention the kinds of Mistake and then write about Mistake of Fact in one paragraph.

Q) Intoxication as General Defence (A.U., November/ December, 2001,

Part-A, Q.2, Marks: 4).

Ans.: Write about Drunkenness or Intoxication as a defence in one page.

II. Essay Questions:

Q) *Ignrantia Juris non excusat* – But Mistake of Fact is excused – Explain and give reasons with loading Case Laws and its applicability as defence in Criminal Law.

Ans.: Write in detail about Mistake, Mistake of Fact and Mistake of Law.

Q) Examine the scope of the defence of Insanity. (S.V.U. Nov. 99, Part-B, Q.10)

and (A.U. Nov/Dec. 2001, Part-B, Q.3, Marks: 18).

Ans.: Write in detail, the law relating to the defence of Insanity.

Q) Examine the scope of the right of private defence under various circumstances and give a recent Case Law. (A.U., Aug. 01, Part-B)

Ans.: Write the meaning and various provisions relating to Right of Private Defence

(Sections 96-106).

PART-II

SPECIFIC OFFENCES

Sections 120 A to 511. It (Part-II) provides for the definitions of various specific offences and prescribes Part-II of the Indian Penal Code, 1860 consists of 18 Chapters (apart from Chapters V.A, XI.A and XX.A) containing punishments for the respective offences. Chapter V.A containing Sections 120 A and 120 B deals with 'Criminal Conspiracy.' It was inserted in the Code by the Criminal Law (Amendment) Act, 1913 with a view to make "Criminal Conspiracy, a substantive offence". Criminal Conspiracy is discussed in Part-I, immediately after Abetment, since conspiracy is a form of abetment. The specific offences under Part-II containing Sections 121 to 511 are namely:

1. Offence against the State (Ch. VI: Sections 121-130 including Sections 121A, 124A).
2. Offences relating to Army, Navy and Air Force (Ch. VII: Sections 131-140 including Sec.138A).
3. Offences against the Public Tranquillity (Ch. VIII: Sections 141-160 including Sections 153A, 153AA and 153B).
4. Offences relating to Public Servant (Ch. IX: Sections 161-171 including Sections 165A, 166A, and 166B: Sections 161 to 165A Repealed/Omitted by Prevention of Corruption Act (Act.49 of 1988), Sec.31 w.e.f. September 9, 1988).
5. Offences relating to Elections (Ch. IX.A: Sections 171A-171I).
6. Contempts of the lawful authority of the public servants (Ch. X: Sections 172-190 including 174A).
7. False Evidence and Offences against Public Justice (Ch. XI: Sections 191-229A including Sections 195A, 216A, 216B, 225A, 225B and 228A).
8. Offences relating to Coin and Government Stamps (Ch.XII: Sections 230-263A).

9. Offences relating to Weights and Measures (Ch. XIII: Sections 264-267).
10. Offences affecting the Public Health, Safety, Convenience, Decency and Morals (Ch. XIV: Sections 268-294A).
11. Offences relating to Religion (Ch. XV: Sections 295-298 including Section 295A).
12. Offences affecting the Human Body (Ch. XVI: Sections 299-377 including 304A, 304B, 326A, 326B, 354A, 354B, 354C, 354D, 363A, 364A, 366A, 366B, 370A, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and.376E).
13. Offences against Property (Ch. XVII: Sections 378-462).
14. Offences relating to Documents and Property Marks (Ch.XVIII: Sections 463 to 489E (including Sections 477A, 489A, 489B, 489C, 489D).
15. Criminal Breach of Contracts of Service (Ch.XIX: Sections 490 to 492).
16. Offences relating to Marriage (Ch.XX: Sections 493 to 498).
17. Cruelty by Husband or Relatives of Husband (Ch.XXA: Section 498A).
18. Offences relating to Defamation (Ch.XXI: Sections 499 to 502).
19. Criminal Intimidation, Insult and Annoyance (Ch.XXII: Sections 503 to 510)
20. Attempt to Commit Offences (Ch.XXIII: Section 511).

Keeping in mind, the importance of the topics from examination point of view, specific offences from selected chapters have been discussed in this book.

LECTURE-XII

OFFENCES AFFECTING HUMAN BODY

Chapter XVI containing Sections 299 to 377 lays down the various provisions relating to offences relating to human body. Sections 299 to 311 (including 304A and 304B) deal with offences affecting human life viz., culpable homicide, murder, death by negligence, dowry death, attempt to murder, suicide etc. Sections 312 to 318 deal with offences relating to birth of children viz., miscarriage, injuries to unborn children, concealment of births etc. Sections 319 to 348 deal with the offences against personal liberty viz., wrongful restraint and wrongful confinement. Sections 340 to 358 (including 354A, 354B, 354C and 354D) deal with criminal force and assault. Sections 359 to 374 (including 363A, 364A, 366A, 366B and 370A) deal with Kidnapping, abduction, slavery and forced labour. Sections 375, 376 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and 376E deal with sexual offences viz., rape, custodial rape, gang rape etc. Section 377 deals with unnatural offences.

In this lecture, the offences relating to human body are discussed as detailed hereunder—

1. Offences affecting life:
   - A) Culpable homicide and murder (Sections 299-304)
   - B) Rash or negligent homicide (Section 304 A). (Causing death by negligence)
   - C) Dowry death (Sec. 304 B).
   - D) Abetment of Suicide (Sections 305 and 306) and Attempt to commit suicide (Section 309).
2. Offences relating to birth of children:
   - A) Causing miscarriage (Sections 312-314)
   - B) Injuries to unborn (Sections 315 and 316)
   - C) Exposure and abandonment of infants and concealment of birth (Sections 317 and 318).

3. Hurt and grievous hurt (Sections 319 to 338 including Sections 326A and 326B).
4. Wrongful restraint and wrongful confinement (Sections 339-348).
5. Criminal force and assault (Sections 349 to 358 including Sections 354A, 354B, 354C and 354D).
6. Kidnapping and abduction (Sections 359 to 369 including Sections 363A, 364A, 366A and 366B).
7. Rape (Sections 375 to 376E (including Sections 376A, 376AB, 376B, 376C and 376D, 376DA, 376DB and 376E); and
8. Unnatural offence (Section 377)

1. OFFENCES AFFECTING LIFE

(A) CULPABLE HOMICIDE AND MURDER (SECS. 299 TO 304)

The term 'homicide' has been derived from Latin words *'homi'* and *'cido'*. *Homi* means 'man' and *cido* means 'I cut'. Thus 'homicide' means "killing of a human being by another human being." Homicide is the generic term for the causing or accelerating the death of a human being by another human being. If a human being kills a particular animal or bird, unless prohibited by law in force it is no homicide/crime. Similarly, if an animal or bird kills a human being, it is no homicide and its owner, will have civil liability under the law of Torts (Scienter Rule etc.).

Homicide is categorised under the following heads namely—

1. Lawful or Justifiable or Simple Homicides.
2. Excusable Homicides and
3. Unlawful Homicides.

1. Lawful or Justifiable or Simple Homicides: Killing of a human being is justified by the law in force, it is called lawful or justifiable or simple homicide. Following are the instances of justifiable homicide—

(a) By a person who is bound, or by a mistake of fact, in good faith believes himself to be bound by law (Section 76, IPC; or

(b) By a person who acts pursuant to a lawful authority or, by reason of a mistake of fact, in good faith he believes himself so authorised (Section 79, IPC); or

(c) By a judge when acting judicially in the exercise of any power which he possesses, or in good faith he believes that he possesses under the law (Section 77, IPC); or

(d) By a person acting in pursuance of the judgment or order of a court of justice (Section 78, IPC); or

(e) By a person acting with no criminal intention to cause harm and in good faith to avert other harm to person or property (Section 81, IPC); or

(f) By a person exercising his right of private defence (Sections 96 to 106, IPC).

2. Excusable Homicides: Excusable homicides are those, in respect of which a person guilty of causing the death is excused/ exempted from criminal liability for the absence of *mens rea*/evil intent/guilty mind as provided for under Chapter IV (General Exceptions/Defences) of the Indian Penal Code, 1860.

(a) Where the death is caused by accident or misfortune, and with no criminal intention or knowledge in the doing of a lawful act in a lawful manner, and with proper care and caution (IPC, Section 80); or

(b) Where death is caused by a child, or a person of unsound mind, or an intoxicated person (IPC, Sections 82, 83, 84 and 85); or

(c) Where death is caused unintentionally by an act done in good faith, for the benefit of the person killed, when—

(i) The person killed, or if a minor or lunatic, his guardian has expressly or impliedly consented to such an act (IPC, Sections 87, 88 and 89); or

(ii) It is impossible for the person killed or his guardian to signify consent in time or the thing to be done for the benefit of the person concerned. (IPC, Section 92).

3. Unlawful Homicide: Unlawful homicides are those, which are prohibited by law and deserve no excuse and are punishable under the Indian Penal Code, 1860. Instances of unlawful homicides are illustrated below—

(a) Culpable homicide (Sections 299, 301, IPC);

(b) Murder (Section 300, IPC);

(c) Culpable homicide not amounting to murder (Section 300, Exceptions 1 to 5);

(d) Death by negligence (Section 304A, IPC);

(e) Dowry Death (Section 304B, IPC);

(f) Abetment of suicide and attempt to commit suicide (Sections 305, 306 and 309, IPC);

(g) Attempt to murder and attempt to commit culpable homicide (Sections 307 and 308, IPC);

(h) Attempt to suicide (Section 309, IPC).

As stated above, there are two branches of culpable homicide namely –

1. Culpable Homicide or Culpable Homicide not amounting to murder (Section 299 and exceptions to Section 300);
2. Culpable Homicide amounting to murder, which is also known as Murder (Sec. 300, Clauses 1 to 4).

(A) CULPABLE HOMICIDE

(Sections 299, 301 and 304)

Definition: The term 'Culpable' means "Criminal" and 'Homicide' means "killing of a human being by another human being". Section 299 of the Indian Penal Code, 1860, defines Culpable Homicide as "Causing the death of a human being with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death."

Section 299 runs as follows—

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury

as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Illustrations:

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intent to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1: A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2: Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3: The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Elements or Ingredients: To constitute the offence of culpable homicide, the following three elements are to be satisfied:

1. Causing of death of a human being.
2. Such death must have been caused by doing an act,
   i) with the intention of causing death; or
   ii) with the intention of causing such bodily injury as is likely to cause death; or
   iii) with the knowledge that the doer is likely by such act to cause death.

Thus, to constitute culpable homicide, it must be proved that the victim is dead. Secondly, the death is caused according to the means alleged by the prosecution. Thirdly, the accused acted intentionally or knowingly.

There are three species of *mens rea* in culpable homicide as follows:

1. An intention to cause death;
2. An intention to cause bodily injury likely to cause death and
3. Knowledge that death is likely to happen.

Intention means the design (desire) of doing an act. Every act is having its own consequence. In culpable homicide, the consequence is death. Knowledge is an awareness of the consequences of the act.

***State of U.P. vs. Ram Sagar Yadav*, AIR 1985 SC 416:** In this case, the police arrested one Brijlal under the false charges of dacoity and was beaten to death. The Supreme Court held that it amounted to culpable homicide under Section 304.

Explanation 1 of Section 299 provides that where a person causes injury to a person who was suffering from some disease or, bodily infirmity, thereby accelerating the death is deemed to have caused the death. It is immaterial, whether the death is immediate result or subsequent result.

As per the second explanation of Section 299 death caused by injury though the death could be avoided or prevented by proper medical aid, the person is liable.

According to explanation 3 that, the causing of the death of a child in the mother's womb is not homicide, but amounts to culpable homicide.

According to Section 301, culpable homicide may be committed by causing the death of a person whom the offender did not intend to kill.

Punishment: Section 304 provides for, the punishment for culpable homicide not amounting to murder. It is imprisonment for life or imprisonment for 10 years and fine, if the offence comes under Clause (1) or (2), if it comes under Clause (3), then imprisonment for 10 years or fine or both.

Section 304 runs as follows—

"Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

***Kasim Abdulla Hafiz vs. Maharashtra State,* 1998 (1) SCC 526 = AIR 1998 SC 1451:** In this case, the accused stabbed on the abdomen of the deceased with knife for two times. After the surgical operation, the deceased survived for 10 days and died. The Doctor/ Surgeon opined that the injury was dangerous and sufficient in the ordinary course of nature to cause death. The second blow by the accused immediately after the first blow indicates his intention to cause such bodily injury likely to cause death. The Supreme Court convicted the accused under Part-I and not under Part-II of Section 304.

***Shanmugam v. State of T.N.* [AIR 2003 SC 200]:** In this case, the accused over a petty quarrel stabbed the deceased, with a spear in the abdomen and chest. The victim died after a week of septicaemia. The court imputed to the accused the intention

of causing severe injury. He was punished under Part-I of Section 304.

Udham Ram v. State of Rajasthan **[1999 Cr.L.J. 2537 (Raj)]:** In this case, the accused killed his wife by beating her throughout the day, while he was in a drunken state. No weapon was used. It was usual with him to beat her after drinking. The Court said that in such circumstances the intention to kill could not be inferred, but it could be said that he had knowledge that such a severe beating would likely to cause her death. Conviction was altered to one under Section 304 Part-II.

Suresh Sitaram Surve v. State Maharashtra **[AIR 2003 SC 344]:** In this case, the accused attacked the victim along with others. The eye-witnesses attributed to him only one injury out of others found on the person of the victim who died. The conviction was altered to under Section 304, Part-I from that under Section 302.

MURDER

(Sections 300-303)

The term 'Murder' is derived from the Germanic word '*Morth*', which means "secret killing". Murder is a more serious offence than the culpable homicide. Culpable homicide is a genus, whereas murder is a species. An offence cannot amount to murder unless it falls within the definition of the culpable homicide. Section 300 defines murder, which runs as follows:

Section 300 – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

3rdly – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death

or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations:

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder,

Exception 1 – Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First – That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly – That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly – That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation – Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations:

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z, this is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2 – Culpable homicide is not murder if the offender, in the exercise is in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration:

Z attempts to horsewhip A, not in such a manner as to cause a grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3 - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 – Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation – It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 – Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration:

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

If there is a clear intention to kill, it is murder (Cl.1, Sec. 300). The offence is murder, if the accused knows that the person would be killed by an ordinary injury.

E.g.: 'A' knows that 'B' is suffering from some disease/injury that a blow is likely to cause his death. If 'B' died in consequence, 'A' will be guilty of the murder. If the death is a likely result, it is culpable homicide. If the death is a most probable result, it is murder.

In order to constitute the offence of murder, it is necessary that, it should be committed without any excuse for incurring the risk of causing the death or bodily injury.

Ingredients: To constitute murder under Section 300 of the Code, the following ingredients are to be satisfied—

i) If the act is done with the intention of causing death.

ii) If the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.

iii) If the act is done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death.

iv) If the act is done with the knowledge, that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and such act is committed without any excuse for incurring the risk of causing death or injury.

Punishment for Murder (Sections 302 & 303): Section 302 prescribes punishment for murder. Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Punishment for murder by life convict (Section 303): Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

The mandatory imposition of death sentence to life imprisoned convict found guilty of committing one more murder gave room for great controversy on the ground that it (Section 303 IPC) violates the guarantee of equality enshrined in Article 14 and right conferred by Article 21 of the Indian Constitution that no person shall be deprived of his life and personal liberty except according to procedure established by law.

Therefore, Section 303 IPC has been declared ultra vires and was struck down as unconstitutional by the Supreme Court in the case of—

***Midhu v. State of Punjab* (AIR 1983 SC 473):** In this case, the Apex Court regards life convicts to be a dangerous class without any scientific basis and thus violates Art.14 and similarly by completely cutting out judicial discretion, it becomes a law, which is not just, fair and reasonable within the meaning of Art.21 of the Indian Constitution.

Therefore, Section 303 IPC has been omitted from IPC and all murders are now punishable under Section 302 IPC.

Section 303 was also challenged as being contrary to Articles 14, 19 & 21 of the Constitution of India. Further, the Supreme Court in—

***Jagmohan Singh v. State of U.P.* (AIR 1973 SC 947),** upheld the sentence of death. The court opined that even assuming 'the right to life was basic to the freedom mentioned in Article 19 of the Constitution, no law could deprive the life of a citizen, unless it was reasonable and in public interest, it would be difficult to hold that capital punishment as such, was unreasonable or not required in public interest.

***Sundershan Kumar vs. State of Delhi*, (1975) 1 SCWR 259:** In this case, the accused caused death of a lady, named Mayadevi, by pouring acid on her face. The reason was, she refused to marry him. As the injuries were sufficient (in ordinary course of nature) to cause death, it was held that it amounted to murder (Clause

A.C. Lagu vs. State of Bombay, **AIR 1960 SC 500:** In the instant case, a rich lady travelled along with her family doctor in a train for better treatment. The doctor administered poison, causing her death. He was held guilty of murder and sentenced to death under Section 302.

The Public Prosecutor vs. Suryanarayana Murthy, **(1912):** In the instant case, 'A' took some life policies in the name of 'B'. With the object of encashing the life policies, 'A' with and intention to kill 'B', gave some sweetmeat to 'B'. 'B' ate a portion of sweetmeat at A's brother-in-law's house and threw away the remainder. Two children of A's brother-in-law ate it and died. But 'B' survived. The Court held 'A', guilty of murder of children and attempt to murder of 'B'.

Poja Ram vs. State of Rajasthan, **1993 Cr.L.J. 2657:** This is a clear case of wife's murder by her husband and the witnesses were the son, daughter, milkman and neighbours all of whom testified that the husband and wife used to quarrel very often and on a particular day the accused in the morning inflicted injury on the head of Sunder Kaur by saying that she had administered poison to him previously in the night. The handle of the Forshi broke and thereafter the accused took up a lathi which was lying nearby and inflicted 4 more injuries on the head and neck of the wife who died. The accused was sentenced to life imprisonment under Section 302 I.P.C.

K.M. Nanavati vs. State of Maharashtra, **AIR 1962 SC 605–**

Facts: Nanavati, the accused in this case was a Naval Officer. His wife by name Sylvia had illicit contact with the deceased (Prem Bhagvan Das Ahuja). When the accused questioned his wife for indifferent attitude towards him, she made a confession that she had illicit contact with the deceased. The accused went to the residence of the deceased and told him that he would give divorce to his wife and asked him to marry her, for which he (deceased) refused. The accused brought a revolver from the ship and shot him dead and surrendered himself to the police.

Judgment: The Trial Court sentenced the accused to death under Section 302 and the same was confirmed by the High Court.

On appeal, the Supreme Court altered the conviction to life imprisonment. His family members submitted mercy petition to the President of India under Art. 72 of the Constitution. Before the decision of the petition, Nanavati accepted the conviction of life imprisonment.

State of Kerala vs. Baby Joseph, **(1992) Cr.L.J. 2257:** In this case, the accused Baby Joseph, having illicit intimacy with the deceased Kunjipennu, was living in her house. Kunjipennu's only son was a coolie who used to go out every morning for work and return only in the evening. One day when he returned home he found his mother dead. The accused who was living in the house was also not found in the house for days together. The accused had said to the deceased that she should not have any dealings with anybody else and he would finish her. Hair of the accused was found in between fingers of the deceased and also on knife. Finger prints of the accused found on kerosene lamp were found reliable. There was knife cut injury on the neck of the deceased which resulted in her death. The accused was sentenced to life imprisonment for murder under Section 302 I.P.C.

Surinder Kumar vs. State (Delhi), **(1987) Cr.L.J. 537:** In this case the accused was tried for murdering his wife by burning. The incident occurred about 10 months after the marriage. The accused took the plea in defence that the death was accidental owing to bursting of kerosene stove. There was also dying declaration. The accused was convicted under Section 302.

Held, that the recovery of the stove with its lid removed and burnt match sticks from the kitchen of the accused appellant's house clearly goes to show that the kerosene in the stove had been poured over victim and then lighted matchsticks had been applied to her. It could not be a case of accidental fire in view of the extensive burn injuries and presence of kerosene in clothes. Likewise there was no reason for victim to have attempted to commit suicide. The dying declaration clearly sets out that the accused appellant was in the habit of ill-treating her and that on the morning in question he had abused her and beat her and on top of everything he had also poured kerosene over her and set fire to her. In the circumstances the

conviction was proper. The accused was sentenced to life imprisonment but the Supreme Court set aside the fine imposed by the lower Court as unnecessary.

***Salyawan v. State of Haryana* (1995 Cr.LJ. 379 (P&H)):** In this case, the accused persons armed with 'jaili' (agricultural implement) and attacked the deceased causing head injury coupled with other multiple injuries with internal damage. It was held that intention of causing such bodily injuries as were likely to cause death, could be inferred and clause three of Section 300 was attracted.

***Thangaiya v. State of Tamil Nadu* [(2005) 9 SCC 650]:** In this case, the Supreme Court categorically ruled that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability.

***State of T.N. v. Nalini* [1999 Cr.LJ. 3124]:** In this case, an educated woman was involved in the assassination of the former Prime Minister of India, Rajiv Gandhi. She was one of the main accused persons without her support, the commission of the offence would not have been possible. The mere fact of her being a woman, who delivered a child, while in custody was not considered to be a ground for not awarding her death penalty.

***Molai v. State of M.P* [AIR 2000 SC 177]:** The victim, a 16 year old girl, in this instant case, was alone in her house and was preparing for the examination. The two accused were working in the house. Taking the advantage of her loneliness, they raped her, strangulated her by using her undergarments and caused injuries on her person with a sharp weapon. Later, they threw her body into a septic tank at the backside of the house, which showed a disregard of respect for human dead body. The court said that it was the rarest of the rare cases, and awarded capital punishment to both the accused.

Culpable Homicide, when amounts to Murder?

Culpable Homicide amounts to murder provided the following two conditions are satisfied:

1. Killing must be accompanied by intention or knowledge specified in Section 300.
2. Killing must not fall within one or other of the five exceptions. (If it comes under these exceptions, it will be culpable homicide not amounting to murder).

If the intention is to kill and the killing results, the accused succeeded in doing so, then it amounts to murder.

When Culpable Homicide is not Murder (Section 300, Exception 1 to 5):

An intentional killing resulting in death is primarily culpable homicide. Sometimes, it amounts to murder and in other cases, it does not amount to murder. In case of the former (murder), the offence is more serious and more severe punishment is prescribed (life imprisonment or death sentence under Section 302). While in case of the latter, (culpable homicide not amounting to murder), the maximum punishment is life imprisonment (under Section 304).

Following are the instances of Culpable Homicide, not amounting to murder:

1. Grave and sudden provocation.
2. Right of private defence.
3. Public servant exceeding his power.
4. Sudden fight and
5. Consent.

→

Distinction between Culpable Homicide and Murder

Culpable Homicide (Sec. 299)	Murder (Sec. 300)
1. Death is a likely result.	1. Death is the most probable result.
2. Less serious, when compared to murder.	2. More serious than culpable homicide.
3. There is intention, but the intention may or may not exist. Even if exists it is not so much stronger as is evident in murder.	3. There is a strong intention to kill the person (victim). Generally there shall be a plan to kill.
4. Every culpable homicide is not murder (it may or may not amount to murder).	4. Every murder is primarily a culpable homicide. On fulfilling certain conditions, it amounts to murder.
5. The maximum punishment is life imprisonment (Under Sec. 304) or 10 years imprisonment or both fine and imprisonment.	5. The maximum punishment is death sentence or life imprisonment and liable to fine.

(A) RASH OR NEGLIGENT HOMICIDE
(Section 304 A)
(Causing Death by Negligence)

Section 304 A of the Indian Penal Code, 1860 deals with death being caused by rash or negligent act, which runs as follows:

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The provisions of Section 304A apply to cases where there is no intention to cause death, and no knowledge that the act done

in all probability would cause death. Section 304A deals with homicide by negligence. It does not apply to a case in which there has been the voluntary commission of an offence against the person.

The expression "Rashness" means an act done with the consciousness of a risk that evil consequence will follow. (It is an act done with the knowledge that evil consequence will follow but with the hope that it will not.) The term 'Negligence' means "breach of a legal duty to take care, which results in injury/damage undesired by the wrong doer." Rashness is a very high degree of negligence.

The term 'negligence' as used in this section does not mean mere carelessness. The rashness or negligence must be of such nature so as to be termed as a criminal act of negligence or rashness. Section 80 of the IPC provides 'nothing is an offence which is done by accident or misfortune and without any criminal knowledge or intention in the doing of a lawful act in a lawful manner by a lawful means and with proper care and caution.' It is absence of such proper care and caution, which is required of a reasonable man in doing an act, which is made punishable under this action.

In negligent homicide, there is no intention or knowledge to cause death. The person (accused/offender) to be held liable under Section 304 A, it should be proved/established that the death is caused by a rash or negligent act. Further, the injury/death is proximate and is the direct result of the negligent act. Contributory negligence is no defence in Criminal Law.

Essential Elements: To constitute negligent homicide under Section 304A of the Code, the following constituents are to be satisfied—

i) There must be death of the person in question;

ii) The accused must have caused such death; and

iii) That such act of the accused was rash or negligent and that it did not amount to culpable homicide.

Difference between Rashness and Negligence: A rash act is primarily an overhasty act. Negligence is a breach of a duty

caused by omission to do something, which a reasonable man guided, by those considerations which ordinarily regulate the conduct of human affairs would do.

Bhalachandra Waman Pathe v. State of Maharashtra **AIR 1968 SC 1319:** In this case, the Supreme Court explained the distinction between a rash and a negligent act in the following manner:

> There is a distinction between a rash act and a negligent act. In the case of a rash act, the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.

In the instant case, the appellant was driving his car at a speed of 35 miles an hour, the speed permissible under the rules. No other circumstance was pointed out to show that he was driving in a reckless manner. Therefore, he cannot be said to have been running the risk of doing an act with recklessness or indifference as to the consequences. However, he was undoubtedly guilty of

negligence. He had a duty to look ahead and see whether there was any pedestrian in the pedestrian crossing. It is likely that while driving the car, he was engrossed in talking with the person who was sitting by his side. By doing so, he failed to exercise the caution incumbent upon him. His culpable negligence and failure to exercise that reasonable and proper care and caution required of him resulted in the occurrence. He was therefore held guilty of the offence punishable under Section 304A.

Relevant Case Law on Section 304 A:

***Tapti Prasad vs. Emperor*, 15 ALJ 590:** Tapti Prasad, the accused in this case was the Assistant Station Master. There was a collision of passenger train and goods train caused by the signalling of the accused. The collision claimed many lives and the accused was convicted under Section 304 A and Section 101 of Railway Act by the Trial Court and on appeal, the Sessions Court and High Court confirmed the conviction.

***Juggan Khan vs. State of Madhya Pradesh*, AIR 1965 SC 831:** In this case, the accused a Homoeopathic Medical practitioner was convicted under Section 304 A for administering dangerous drugs to a patient/deceased without studying their effect.

***Ramava v. R.* [(1915) 17 Bom LR 217]:** In this case, the accused administered to her husband a deadly poison (arsenious oxide) believing it to be a love potion in order to stimulate his affection for her but the husband died. She was convicted under Section 304A considering the act of the accused was rash and negligent.

***Baldevji v. State of Gujarat* [AIR 1979 SC 13 27]:** In this case, the accused had run over the deceased, while the deceased was trying to cross over the road. The accused did not attempt to save the deceased by swerving to the other side, though there was sufficient space. This was a result of his rash and negligent driving. His conviction under Section 304A was upheld.

(C) DOWRY DEATH
(Section 304B)

Dowry Death: Section 304 B of the Indian Penal Code, 1860 deals with 'Dowry Death'. In 1986, a new offence known

as "Dowry Death" was inserted in the Indian Penal Code as Section 304B by the Dowry prohibition (Amendment) Act, 1986 (43 of 1986) with effect from November 19, 1986. The provisions under Section 304B, IPC are more stringent than that provided under Section 498A of the Penal Code. The offence is cognizable, non-bailable and triable by a Court of Session.

The new Section 304 B is supplementary to 498A which runs as follows:

Section 304 B: Section 304 B, I.P.C. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "Dowry Death" and such husband or relative shall be deemed to have caused her death.

Explanation: For the purposes of this sub-section, "Dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

A presumption as to dowry death as against the accused has also been inserted in the Evidence Act after Section 113 as Section 113 B which is as follows:

Presumption as to Dowry Death: "When the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that such person had caused the dowry death."

Explanation: For the purposes of this Section, "Dowry Death" shall have the same meaning as in Section 304 B of the Indian Penal Code.

Corresponding change was introduced in the Criminal Procedure Code of 1973, by which it was made a non-bailable cognizable or non-cognizable offence.

In this connection reference should necessarily be made to Section 498 A also subsequently inserted in the I.P.C. which defines "Cruelty by husband or relatives of husband."

Section 498 A: "Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine."

Explanation: For the purpose of this Section, "Cruelty" means:

a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide, or to cause grave injury or danger to life or limb or health (whether mental or physical) of the woman; or

b) Harassment of the woman where such harassment is with a view to coercing her or any person relating to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The term 'Dowry' has not been defined in the Indian Penal Code. However, section 304B, IPC in Explanation clause has affirmed that 'dowry' shall have the same meaning as defined in section 2(1) of the Dowry Prohibition Act, 1961, which states that 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to the either party to the marriage or to any other person

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahar in the case of persons to whom the

Muslim Personal law (*Sharait)* applies. However, customary payments and gifts are not dowry as held by Supreme Court on 31st January, 2008.

Ingredients of Section 304B: To constitute dowry death under Section 304B, the following conditions are to be satisfied—

(a) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

(b) such a death should have occurred within seven years of her marriage;

(c) she must have been subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for, or in connection with, the demand for dowry; and

(e) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 304B imposes a statutory obligation on a court to presume that the accused committed the dowry death when the prosecution proves that:

i) death of his wife has occurred otherwise than under normal circumstances within seven years of her marriage; and

ii) soon before her death she was subjected to cruelty or harassment by her husband or his relatives in connection with demand for dowry.

If any accused wants to escape from the said catch, the burden is on him to disprove it. If he fails to rebut the presumption, the court is bound to act upon it.

Section 304B used the words that it should be shown that 'soon before' her death, the woman has subjected to cruelty or harassment by her husband or any relative of her husband. The expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. The expression 'soon before' is not synonymous with the term 'immediately before'. It normally implies

that cruelty should not be remote in time to become stale enough not to disturb mental equilibrium of the woman concerned. It should neither be too late nor too stale before the date of death of the victim. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. The determination of the period which can come within the term 'soon before' is left to be determined by the courts depending upon the facts and circumstances of each case.

Reema Aggarwal v. Anupam **[2004 Cr.LJ 892 (SC)]:** It was observed in this case that if the validity of marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Section 498A and 304B of IPC and Section 113B of the Evidence Act were introduced cannot be lost right of. The obvious objective of enacting the above sections was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. The argument that since there was no valid marriage, the question of dowry does not arise is not acceptable. The Court further observed that the legislative intent is quite clear from the fact that it is not only the husband but also his relations who are covered by Section 498A of IPC.

Imtiyaz Khan v. State of Jharkhand **[2004 Cr.LJ 2560 (Jhar.)]:** it was observed that opinion regarding marriage between parties could not be formed merely by living together and having illicit relationship. It did not constitute marriage. It was possible that victim was compelling the accused for marriage and for that reason she was burnt, hence, it could be a case of culpable homicide and doctor stating name of accused in post-mortem report in the column of 'husband' was immaterial. It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions – Sections 304B and 498A of IPC whatever be the legitimacy of the marriage itself for the limited purposes of Section 304B and 498A of the Code.

Public Prosecutor, High Court of A.P. v. Tota Basava Punnaiah and others **[1989 CrLJ 2330 (A.P.)]:** In this case, it was observed that even the deceased died on account of the hanging within three years after her marriage, still the death comes within the scope of Section 304B, IPC, if it is shown that she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

Kodam Gangaram v. State of A.P. **[1999 Cr.LJ 2181 (A.P.)]:** In this case, it was observed that clear statement of deceased that she was forced to commit suicide due to harassment of dowry demand by husband, and her statements are fully corroborated by other evidences, it can well be presumed that it was only harassment which resulted in death, conviction under Section 304B and 498A IPC is proper and fully justified.

Pawan Kumar v. State of Haryana **[AIR 1998 SC 958]:** In this case, it was held that under Section 2 of the Dowry Prohibition Act, 1961 that an agreement for dowry is not always necessary. There was in this case demand for a TV set and a Scooter. The demand was related with marriage. If fell within the meaning of the word dowry under Section 304B.

Mulak Raj vs. Satish Kumar**, AIR 1992 SC 1175:** In this case, the deceased and the accused were wife and husband respectively. One and half years after their marriage, the deceased (wife) aged 20 years was found dead with burnings. The accused pleaded that it was a suicide. It was detected from the post-mortem report that the deceased died due to constriction (asphyxia). With an intention to conceal the evidence, Kerosene was poured on the body and was burnt. The Trial Court, basing on the post-mortem report and the circumstantial evidence, convicted the accused to life imprisonment. On appeal, he was acquitted by the High Court as there was no eye witness. On appeal, the Supreme Court confirmed the conviction of the Trial Court.

Punishment for Dowry Death: The punishment for causing dowry death is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Dev Prasad v. State of U.P. [2002 CrLJ 4291]: It is significant to note in the instant case that, while an ordinary murder can be punished by a death sentence under Section 302 IPC, why a dowry death, which is a much worse offence has a maximum punishment of life imprisonment? An ordinary murder is committed in a fit of rage or for property, but a dowry death is not just an ordinary crime, it is a social crime. It outrages the modern conscience and makes the whole of society revert to feudal barbarism. Hence, Court recommended to Parliament to amend the law and provide for death sentence in dowry death cases.

The offence is cognizable, non-bailable, non-compoundable and triable by Court of Session.

(D) ABETMENT OF SUICIDE

(Sections 305 and 306)

The word 'Abetment' means "Commission of an offence on the advice or instigation of another." The person, who abets is called 'Abettor'. Whereas, the term 'Suicide' means "putting an end to one's own life." Suicide is a self inflicted homicide or self killing. So, the expression 'Abetment of Suicide' denotes "a person, who instigates another to commit suicide."

'Suicide' has not been declared as a crime by the IPC obviously because once a person successfully commits suicide, that person is no longer alive to be prosecuted and the crime abates with him. However, an attempt to commit suicide is punishable under Section 309 of IPC. An abetment to commit suicide is also made punishable under Sections 305 and 306 IPC.

Section 305 and 306 of the Indian Penal Code deal with abetment of suicide of a child or insane person and abetment of suicide (of others/adults) respectively, which read as follows:

Abetment of Suicide of Child or Insane Person (Section 305): If any person under eighteen years of age or any insane person or any delirious person or any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of Suicide (Section 306): If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The person (Abettor), who abets a person under 18 years of age or an insane or delirious person or an idiot or an intoxicated person is punishable under Section 305 I.P.C. with death or imprisonment for life or 10 years imprisonment and fine. Whereas, a person, who abets others (sane/adults) to commit suicide is punishable under Section 306, imprisonment for 10 years and fine.

Illustration:

A, a woman, prepared to commit sati in the presence of B, C and others who stood around and encouraged her. B, C and the rest are liable for the offence of abetment of suicide by A.

Sections 305 and 306 apply only when the person abetted commits suicide. There must then be proof that the death of the person died was suicide. If it was a natural death, there could be no abetment.

The Law Commission, with reference to Sections 305 and 306, wrote: "It seems to us that the rule would be applied in these clauses chiefly in such a case as this, where a person, legally bound to take care of the person of another, has by an illegal omission of his duty intentionally given him opportunity or permitted him to obtain the means of seeing another preparing to destroy himself, say by hanging, and allowing him to accomplish his purpose without any attempt to prevent him, if, as may be expected, the law of procedure makes it common duty incumbent upon all men to assist in preventing offences about to be committed in their presence. The intention here would be inferable from the circumstances. In the former case collateral proof of the intention would be requisite. But we apprehend that it is active aid which is principally intended in these clauses, and to which the higher punishments are meant to be applied." (First Report Sections 321 and 322).

***Brij Lal vs. Prem Chand*, AIR 1989 SC 1661:** In this case, the accused Prem Chand was an advocate. He married Veena Rani,

a Bank employee the deceased in this case in 1973. The accused was constantly demanding money from the deceased and also beating her frequently. One day the accused went to the extent of saying that the deceased wife could go to hell but he should get the required money forthwith. As the accused was quarrelling with the deceased wife every day for payment of money, she was frustrated and preferred to die and on the same day put an end to her life.

The Trial Court (the Court of Additional Sessions Judge) found the accused guilty under Section 306 I.P.C. and sentenced him to undergo rigorous imprisonment for four years. However, he was acquitted by the High Court. The matter remained in the abeyance for 11 years. Finally, the case, came up before the Supreme Court, which overruled the acquittal by the High Court.

***Gurbachan Singh v. Satpal Singh,* (1990) 1 SCC 445 = AIR 1990 SC 209:** The deceased in the instant case was a newly-wedded girl, died of burn injuries. There was sufficient evidence about harassment and torture for bringing insufficient dowry. She was also accused of carrying an illegitimate child. In view of this harassment, the deceased committed suicide by setting herself afire. It was held that the provocations given to the deceased were grave and serious enough for an ordinary Indian woman to kill herself. The evidence also revealed that none of her in-laws made any attempt to save her from burn injuries. The deceased's parents were neither informed about her burns nor were prompt steps taken for giving her medical assistance. The accused were convicted for abetting the suicide.

***Tej Singh v. State* (AIR 1958 Raj.):** It was held in this case that encouraging a widow to commit *sati* has been held to be abetment of suicide under Section 306.

Punishment: The punishment for abetment of suicide of a minor or insane person under Section 305 is death or imprisonment for life or imprisonment for a term not exceeding ten years, and shall so be liable also to fine. The punishment for abetment of a person under Section 306 is imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Offence under Sections 305 and 306 is cognizable and warrant should ordinarily issue in the first instance. It is non-bailable and non-compoundable and is exclusively triable by the Court of Session.

ATTEMPT TO COMMIT SUICIDE

(Section 309)

Attempt to commit suicide is made punishable under Section 309, I.P.C., which runs as follows:

"Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

A person who commits suicide is one who deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death as if, attempting to kill another, he runs upon his antagonist's word, or, shooting at another, the gun burns and kills himself.

'Attempt' means "To make an effort to effect some object; to endeavour; an effort or endeavour to effect the accomplishment of an act; an intention to do a thing combined with an act which falls short of the thing intended."

Dwarka Poonja v. Emperor (14 Bom LR 146): In this case, the accused jumped into a well to avoid and escape from the police and came out of the well of his own accord. He was convicted of this offence but his conviction was quashed by the High Court on the ground that he had no intention to commit suicide.

Ramamoorthy v. State (1992 Cr.LJ 2074 (Mad.)): In this case, a person commenced fast-unto-death for certain demands but even before his demands were conceded, he chose to get himself treated medically without protest. It was held that the *mens rea* to destroy himself was absent and it could not be said that he attempted to commit suicide.

There had been a great controversy as to constitutional validity of Section 309 I.P.C. Section 309 was initially struck down as

a cruel and irrational provision and violative of Article 21 of the Constitution i.e., right to life under Article 21 also includes right to die.

The A.P. High Court in ***Jageeswar vs. State of A.P.*, AIR 1988 Cr.L.J. 549** – held that Section 309 I.P.C. is constitutionally valid. In this case, the accused, a doctor attempted to commit suicide along with his wife after killing his four children. He was convicted for murder (under Sec. 302) and attempt to suicide under Sec. 309.

However, the Bombay High Court in ***State of Maharashtra vs. Maruti Sripati Dubal*, 1987 Cr. L.J. 549** and the Supreme Court in ***P. Ratnam and Nagabushan Patnaik vs. Unon of India*, (1994) 3 SCC 394** held that "Right to life" under Art. 21 also includes right to die and struck down Section 309 I.P.C. as unconstitutional.

But, recently, a five Judge Constitution Bench of the Supreme Court overruled the earlier decision of Supreme Court in ***P. Ratnam's case*** and declared that Section 309 I.P.C. is not violative of Art. 21 and is Constitutional. In view of the above, it is made clear that Section 309 I.P.C. is constitutionally valid. (***Gian Kaur vs. State of Punjab,*** (1996) 2 SCC 648).

2. OFFENCE RELATING TO BIRTH OF CHILDREN

Offences relating to birth of children may be explained under the following heads:

A) Causing miscarriage (Sections 312-314).

B) Injuries to unborn (Sections 315 and 316).

C) Exposures and abandonment of infants (Sections 317 and 318).

A) CAUSING MISCARRIAGE

(Sections 312 to 314)

Section 312 to 314 deal with Causing Miscarriage. Section 312 deals with causing miscarriage with the consent of the victim. Section 313 deals with causing miscarriage without woman's consent.

Section 314 deals with death caused by an act done with intent to cause miscarriage.

The expression "miscarriage' means pre-mature expulsion of foetus or embryo from the uterus.

Causing miscarriage (Section 312): Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation: A woman who causes herself to miscarry, is within the meaning of this section.

Under Section 312 voluntarily causing miscarriage is an offence if such miscarriage is not caused in good faith for the purpose of saving the life of the woman. The explanation to the section provides that a woman who causes herself to miscarry is within this section. If the woman is quick with child at the time of causing miscarriage more punishment is provided, (quick with child refers to any time after the time at which the woman first feels the movement of the child within her).

Causing miscarriage without woman's consent (Section 313): Section 313 deals with whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by act done with intent to cause miscarriage (Section 314): Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent: and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

Explanation: It is not essential to this offence that the offender should know that the act is likely to cause death.

If death happens while causing miscarriage that is made punishable by Section 314. The explanation to the section states that it is not essential that the offender should know that the act was likely to cause death.

B) INJURIES TO UNBORN

(Sections 315 and 316)

Sections 315 and 316 deal with injuries to unborn children.

Act done with intent to prevent child being born alive or to cause it to die after birth (Section 315): "Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

If a man intending to prevent the birth of a living child, does any act which prevents the child from being born alive or causes to die after its birth, and if such act is not done in good faith for the purpose of saving the life of the mother he has committed an offence under Section 315."

Causing death of quick unborn child by act amounting to culpable homicide (Section 316):

"Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

C) EXPOSURE AND ABANDONMENT OF INFANTS

Exposure and abandonment of child under twelve years, by parent or person having care of it (Sec.317): "Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

Section 317 provides punishment for abandoning a child under the age of twelve years by parents or persons having care of it. If the parents or the persons who are having the care of a child under twelve years expose it or leave it in any place with the intention of wholly abandoning it, such acts are made punishable as per this Section. The explanation to the Section provides that if the child dies in consequence of the exposure, responsible persons are liable for culpable homicide or murder as the case may be.

The liability under this section rests only with the father or mother or one having the care of such child.

Ingredients:

(1) The person coming within its purview must be father or mother or must have the care of the child;

(2) Such child must be under the age of 12 years;

(3) The child must have been exposed or left in any place with the intention of wholly abandoning it.

Concealment of birth by secret disposal of dead body (Sec.318): " Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, may extend to two years, or with fine, or with both."

Section 318 prevents infanticide and penalises the disposal of the dead body to prevent detection of the infanticide. It is important to note that the dead body is buried not with the intention of concealing death, but with the intention of concealing birth.

Ingredients:

(1) The birth of the child;

(2) Secretly burying or disposing of the dead body of a child; and

(3) With intention to conceal the birth of such a child.

3. HURT AND GRIEVOUS HURT

(Sections 319-338)

Sections 319 to 338 (including Sections 326A and 326B) of the Penal Code deal with offence of Hurt and Grievous Hurt. Section 319 deals with Hurt. Section 320 deals with Grievous Hurt. Section 321 provides for Voluntarily causing hurt. Section 322 prescribes Voluntarily causing grievous hurt. Section 323 deals with Punishment for voluntarily causing hurt. Section 324 provides for Voluntarily causing hurt by dangerous weapons or means. Section 325 deals with Punishment for voluntarily causing grievous hurt. Section 326 prescribes Voluntarily causing grievous hurt by dangerous weapons or means. Section 326A deals with Voluntarily causing grievous hurt by use of acid, etc. Section 326B deals with Voluntarily throwing or attempting to throw acid. Section 327 provides for Voluntarily causing hurt to extort property, or to constrain to an illegal act. Section 328 deals with Causing hurt by means of poison, etc., with intent to commit an offence. Section 329 deals with Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act. Section 330 provides for Voluntarily causing hurt to extort confession, or to compel restoration of property. Section 331 prescribes Voluntarily causing grievous hurt to extort confession, or to compel restoration of property. Section 332 deals with Voluntarily causing hurt to deter public servant from his duty. Section 333 prescribes Voluntarily causing grievous hurt to deter public servant from his duty. Section 334 deals with Voluntarily causing hurt on provocation. Section 335 prescribes Voluntarily causing grievous hurt on provocation. Section 336 deals with Act endangering life or personal safety of others. Section 337 provides for Causing hurt by act endangering life or personal safety of others. Section 338 deals with Causing grievous hurt by act endangering life or personal safety of others.

Hurt: Meaning: The word 'hurt' means to cause pain to, or to damage; or a bodily injury. The word hurt, in general, includes both physical and mental pain. Some degree of physical violence is implied in 'hurt'. 'Hurt' may be simple one or a grievous one.

Hurt means causing bodily injury or infirmity by one person (human being) to another person (human being). Grievous hurt is an aggravated form of hurt. The slightest injury or pain caused to a person is assault (Sec. 351). But, hurt is a bodily injury, which is more aggravated than assault. Hurt is also known as 'simple hurt'.

Simple Hurt (Sections 319, 321 & 323): It means causing of (i) bodily pain; (ii) disease; (iii) infirmity to one human being by another human being. 'Infirmity' means "inability of an organ to perform its normal functions."

The infirmity may be temporary or permanent. Direct physical contact between the accused and the victim is not necessary to constitute hurt. If the hurt is caused voluntarily, it is an offence.

According to Section 319, "whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

The accused to be guilty of hurt, the prosecution must prove that the accused by his act voluntarily caused bodily pain, disease or infirmity to the complainant (victim).

Ingredients: To constitute hurt (battery under English Law) it is necessary to cause

i) Bodily pain,

ii) Disease, or

iii) Infirmity to another.

Voluntarily Causing Hurt (Sec.321): According to Section 321 of the Indian Penal Code, "Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Punishment for Grievous Hurt (Sections 325 to 328):

Punishment for voluntarily causing grievous hurt (Sec.325): "Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Voluntarily causing grievous hurt by dangerous weapons or means (Sec. 326): "Whoever, except in the case provided for by Section 335, voluntarily, causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Voluntarily causing grievous hurt by use of acid, etc. (Sec. 326A) (this Section is inserted by Act.13 of 2013, w.e.f. 3.2.2013): "Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;

Provided further that any fine imposed under this section shall be paid to the victim."

Voluntarily throwing or attempting to throw acid (Sec. 326B) (this Section inserted by Act 13 of 2013, w.e.f. 3.2.2013): "Whoever

throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."

Explanation 1: For the purposes of Section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2: For the purposes of Section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

Voluntarily causing hurt to extort property, or to constrain to an illegal act (Sec.327): "Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Causing hurt by means of poison, etc., with intent to commit an offence (Sec.328): "Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Punishment for Hurt (Section 323): Section 323 of the Penal Code provides punishment for voluntarily causing hurt. It may be one year imprisonment or with fine of Rs.1,000/- or both.

Relevant Case Law:

***Marana Goundan v. R* [AIR 1941 Mad. 560]:** In this case, the accused demanded repayment of money from the deceased which the latter owed him. The deceased promised to pay later. As he was not satisfied, the accused kicked him on the abdomen. Consequently, the deceased was collapsed and died. The accused was held guilty of causing hurt as he did not intend or knew that kicking on the abdomen would likely to endanger the life.

***Naga Sheve po v. R* [(1883) SJLB 179]:** In this case, the accused struck a man one blow on the head with a bamboo yoke and the injured man died afterwards in a hospital. He was held guilty of an offence of causing hurt under Section 319 because there was no intention to cause death and the blow in itself was not of such a nature as was likely to cause death.

***Arjuna Sahu v. State* [31 Cut. L.T. 831]:** It observed in this case that a push on the neck is likely to cause some bodily pain within the meaning of Section 319 though in some cases it may be so slight.

GRIEVOUS HURT

(Sections 320, 322 & 325)

Grievous Hurt (Section 320): The more serious or aggravated form of hurt is called 'Grievous Hurt'. According to Section 320, any of the following eight instances come under the head 'Grievous Hurt':

i) Emasculation (depriving a person of his masculine vigour);

ii) Permanent privation of the sight of either eye;

iii) Permanent privation of the hearing of either ear;

iv) Privation of any member or joint;

v) Destruction or permanent impairing of the powers of any member or joint'

vi) Permanent disfiguration of the head or face;

vii) Fracture or dislocation of a bone or tooth; and

viii) Any hurt, which endangers life or makes the victim suffer from severe pain or unable to follow (take up) his ordinary pursuits for a period of 20 days or more.

i) Emasculation: It means unsexing the man by depriving him of his virility. Thus, this offence applies only as against men and the clause was inserted to counter-act the practice alleged to be common amongst illiterate uncultured women in India to squeeze men's testicles on the slightest provocation. Injuries to member a private is peculiarly offensive to the feelings of the injured parties and very often prove most dangerous. The injury to scrotum often leads, not only to emasculation but even to death.

ii) Injury to Eye sight: The second kind of grievous hurt is causing injury to eyesight. The test of gravity is the permanency of the injury caused to one eye or both eyes.

iii) Deprivation of hearing: Causing deafness is the third kind of grievous hurt. It may be with respect to one ear or both ears. To attract this clause the deafness caused must be permanent.

iv) Loss of Limb or joint: Causing loss of a limb or joint is the fourth kind of grievous hurt. The expression used in the section is deprivation of any member, section or joint, crippling a man with life-long misery. The term member is used to mean nothing more than an organ or a limb.

v) Impairing of limb: Limbs and joints are essential parts of body that help in the discharge of normal transactions incidental to ordinary life. Destruction or permanent impairing of the powers of any member or joint is the fifth kind of grievous hurt.

Disabling is distinguishable from disfiguring as discussed in the sixth clause. To disfigure means to cause some external injury which detracts from a person's personal appearance. It may not weaken him. On the other hand, to disable means to do something creating a permanent disability and not a mere temporary injury.

vi) Permanent disfiguring of the head or face: It is the sixth kind of grievous hurt. It consists in permanent disfiguration of the head or face. In ***Gangaram v. State of Rajasthan,*** where the bridge of the nose was cut, as the injury was inflicted by a sharp-edged weapon, it was held that the act amounted to permanent

disfiguration within the meaning of this clause and hence the injury was grievous.

vii) Fracture or dislocation of a bone or tooth: This may or may not be attended with permanent disability. The injury is considered grievous hurt because of the intense suffering to which it gives rise and the serious disability which it causes the sufferer. A fracture is not defined in the Code. It depends on the facts and circumstances of each case.

A fracture, in order to attract this clause, must extend to the inner surface. If the act results only in an abrasion and does not break the bone, it will not be a fracture. In ***Harilal v. State of Uttar Pradesh,*** **AIR 1970 SC 1969,** the Supreme Court held that ordinarily fracture means breaking of a bone. A mere abrasion or cut that does not go across the bone cannot be called a fracture of the bone. But if the injury is grave, even partial cut of the skull vault (root or chamber) may amount to a fracture within the meaning of clause 7 of section 320, IPC.

viii) Dangerous hurt: The provisions contained in clause 8 of section 320, IPC are a general nature. The clause is borrowed from French Penal Code. It refers to three classes of injuries which are not covered under any one of the above clauses 1 to 7 of the section. It labels the following hurts as grievous, viz., those

i) Which endangers life; or

ii) Which causes the sufferer to be during the space of 20 days in severe bodily pain; or

iii) Which causes the sufferer to be during the space of twenty days unable to follow his ordinary pursuits.

Naib Singh vs. State of Punjab**, 1986 Cr. L.J. 2061 SC** – Where the victim was struck on middle of head by Sandasa and bleeding injury was caused through the turban, the accused was held guilty for causing grievous hurt under Section 320 clause seventh of 324 and 326.

Ram Pal Singh vs. State**, 1993 Cr.L.J. 2715 Allahabad H.C.** – In this case the accused began to construct a manger or shed in open land before the house of the deceased's mother. The mother

protested and she had her 6 years old daughter on her lap. The accused abused her and snatched her 6 year old girl from her lap and threw her on ground. The child died some six days later. The accused was charged of the offence of culpable homicide before the Sessions Court and sentenced to life imprisonment under Section 302 I.P.C. But on appeal the Allahabad High Court sentenced him 3 years imprisonment for causing grievous hurt under Section 325 I.P.C. The High Court held that the accused had no intention to cause the death of the child and the object of the accused in removing the child from the lap of her mother was only to cause grievous hurt to the mother.

4. WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

(Sections 339 to 348)

Sections 339 to 348 of Indian Penal Code, 1860 deal with offences against human freedom. Section 339 defines "Wrongful Restraint". Section 340 explains "Wrongful Confinement". Section 341 prescribes Punishment for Wrongful restraint. Section 342 deals with Punishment for wrongful confinement. Section 343 explains Wrongful confinement for three or more days. Section 344 deals with Wrongful confinement for ten or more days. Section 345 explains Wrongful confinement of person for whose liberation writ has been issued. Section 346 defines Wrongful confinement in secret. Section 347 deals with Wrongful confinement in extort property, or constrain to illegal act. Section 348 explains Wrongful confinement to extort confession, or compel restoration of property.

The 'Restraint' means "cutting short of a person's liberty. The slightest obstruction may amount to restraint, while confinement denotes total restraint.

Wrongful Restraint (Section 339): The expression 'wrongful restraint' means "infliction of a bodily restraint upon the freedom of a person." If the restraint is partial, it is called 'wrongful restraint' and is an offence under Section 339 I.P.C. (If the restraint is total, it is called 'wrongful confinement' and is an offence under Section 340 I.P.C.)

Section 339 I.P.C. defines wrongful restraint as 'Voluntarily obstructing a person so as to prevent that person proceeding in any direction in which he has right to proceed'.

To constitute wrongful restraint physical obstruction or presence of the accused is not necessary. Mere words would constitute the offence under Section 339. There must exist imposition of bodily restraint upon the freedom of a person. Such restraint must be partial, and to prevent the ordinary/normal movements of the person.

Illustration: A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Essentials: To constitute Wrongful Restraint, the following two ingredients are to be satisfied.

1. Voluntary obstruction of a person.
2. The obstruction is to prevent a person from proceeding in any direction in which he has a right to proceed.

Exception: Obstruction of a private way over a land or water is no offence under Section 339 I.P.C.

***Sobha Rani vs. The King*, 1950 Cr.L.J 668** – The accused, a landlord obstructed/prevented the tenant from using the bath room. The accused was held guilty of wrongful restraint under Section 339.

Punishment for Wrongful Restraint (Sec.341): Section 341 provides punishment for wrongful restraint. It is simple imprisonment for a term, which may extend to one month or with a fine, which may extend to Rs.500/- or with both.

Wrongful Confinement (Section 340): Section 340 explains, when an Act will amount to wrongful confinement.

Earlier, Wrongful Confinement was called 'False Imprisonment'. According to *Winfield*, it means "the infliction of bodily restraint which is not expressly or impliedly authorised by law."

The authors of I.P.C. regarded the words 'False Imprisonment' as misleading and substituted it with a new name 'Wrongful Confinement'.

Definition of Wrongful Confinement (Section 340): According to Section 340 I.P.C. the offence of wrongful confinement has been defined as follows:

"Whoever wrongfully restrains any person in such a manner as to prevent such person from proceeding beyond certain circumscribing limits, is said wrongfully to confine the person."

Illustrations:

a) 'A' causes 'Z' to go within a walled space and locks 'Z' in. 'Z' is thus prevented from proceeding in any direction beyond the circumscribing line of wall. 'A' wrongfully confines 'Z'.

b) 'A' places men with firearms at the outlets of a building, and tells 'Z' that they will fire at 'Z' if 'Z' attempts to leave the building. 'A' wrongfully confines 'Z'.

Essential Elements: To constitute wrongful confinement, the following ingredients are to be satisfied.

1. Wrongful restraint of a person or total restraint or complete deprivation of liberty without lawful justification.
2. Such restraint must prevent the person from proceedings beyond certain circumscribing limits.

E.g.: Gherao, unlawful arrest, locking in a room, not allowing to move by pointing a pistol etc.

To constitute wrongful confinement, the period or length of confinement is immaterial. The conditions is that, the confinement must be total. In wrongful confinement, the person confined is free to move within certain limits.

Relevant Case Law:

***Bhim Singh vs. State of J & K*, AIR 1986 SC 494:** In this case, Bhim Singh, an M.L.A. of J & K Assembly was wrongfully detained by the police, while he was going to attend the Assembly session. His wife moved the writ of *habeas corpus*. The Supreme Court awarded him, exemplary damages of Rs.50,000.

***Bird vs. Jones*, (1845) 7 Q.B. 742, 744:** In this case, the defendants wrongfully enclosed a public footway by arranging seats to witness a boat race. The plaintiff asked them to give way. But

the defendants asked the plaintiff to pass through the other side of the bridge. The plaintiff refused to do so and sued them for wrongful confinement. The defendants were held not liable since, there was an alternative way (i.e., means of escape).

Punishment for Wrongful Confinement (Sec.342): "Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Section 342 I.P.C. provides punishment for confinement even for a single hour. The punishment under Section 342 is one year imprisonment or a fine of Rs.1,000/- or both. According to Section 343 I.P.C. the punishment is two years imprisonment or fine or both, for wrongfully confining for 3 days or more. For confining 10 days or more, the punishment is three years imprisonment and also fine under Section 344 I.P.C.

Distinction between Wrongful Restraint and Wrongful Confinement

Wrongful Restraint (Sec. 339)	Wrongful Confinement (Sec. 340)
1. The restraint is partial.	1. The restraint is total.
2. The person is restrained from proceeding towards a particular direction.	2. The person is restrained from proceeding to all directions beyond a certain area.
3. It is an offence under Sec. 339.	3. It is an offence under Sec. 340.
4. Wrongful restraint is genus.	4. Wrongful confinement is species of the wrongful restraint.
5. Punishment is simple imprisonment upto one month or Rs.500/- or both (Sec. 341).	5. Punishment is imprisonment upto one year or fine upto Rs.1,000/- or both.

5. CRIMINAL FORCE AND ASSAULT

(Sections 349 to 358)

Force: Meaning: 'Force' means efficacy and signifies strength, vigour, might, energy, power, violence, armament, necessity. The definition nearest to the exact meaning of the word 'force' is violence; power exerted against will or consent. The term 'Force' is defined in Section 349 and the term 'Criminal Force' is defined in Section 350 I.P.C. and both contemplate the use of force to a person and not to a thing. Whereas the term 'Assault' means "laying of hands or an attempt to do a corporal hurt to another, by using some force without any lawful justification."

Force (Section 349): A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling.

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion or cessation of motion in one of the three ways hereinafter described:

First – By his own bodily power.

Secondly – By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly – By inducing any animal to move, to change its motion, or to cease to move.

Ingredients: To constitute force there must be at least:

(1) The causing of motion;

(2) Change of motion; or

(3) Cessation of motion.

Chandrika Sao v. State of Bihar **[AIR 1967 SC 170]:** In this case, the accused snatched the account books from the hands of officer which were being inspected. The Supreme Court observed

it would be clear from a bare perusal of the section that one person can be said to have used force against another if he causes motion, change of motion or cessation of motion to that other. By snatching away the books which the official was holding the accused necessarily caused a jerk to the hand or hands. Further, the natural effect of snatching the books from the hand or hands of the official would be to affect the sense of feeling of the hands of the official. The Court, therefore held that the action of the accused amounts to use of force as contemplated by Section 349 of the Code.

Criminal Force (Section 350): The term force under Section 349 becomes criminal force when (i) it is used in order to the committing of the offence and is used without consent and (ii) when it is intentionally used to cause injury, fear or annoyance to some other person.

The term 'battery' of English law is included in 'criminal force'. The criminal force may be very slight as not amounting to an offence as per section 95. Its definition is very wide so as to include force of almost every description of which a person may become an ultimate object.

Ingredients:

i) Intentional use of force to any person;

ii) Such force should have been used without the consent of the victim;

iii) The force must have been used to commit an offence or with the intention to cause injury, fear or annoyance to the person to whom it is used.

When A spits over B. A would be liable for using criminal force against B because spitting must have caused annoyance to B. Similarly if A removes the veil of a lady, he would be guilty under this section.

'A' a house-owner tortured one of his tenants in order to compel him to pay his rent and realised his dues. Here 'A' will be liable for using criminal force under section 350 of the Code and in case some hurt is also caused he may also be liable for causing simple or grievous hurt as the case may be.

Section 350 runs as follows— Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to case, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustration:

A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Ingredients: To constitute Criminal Force, the following ingredients are to be satisfied:

1. The intentional use of force to any person.
2. Such force must have been used without the person's consent.
3. The force must have been used –
   a) in order to the committing of an offence; or
   b) with the intention to cause, or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom it is used.

ASSAULT

(Section 351)

According to Tomlins Law Dictionary, assault is "An attempt with force and violence, to do corporal hurt to another as by striking at him with or without a weapon. But no words whatsoever, be they ever so provoking can amount to an assault, notwithstanding the many ancient opinions to the contrary."

Assault is something less than the use of criminal force. Every criminal force includes assault (but every assault does not include the criminal force). The term assault literally means "laying of hands or an attempt to do a corporal hurt to another by using some force without any lawful justification."

Section 351 defines Assault, which runs as follows:

"Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will

cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault."

Explanation: Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations:

a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

Distinction between Criminal Force and Assault

Criminal Force	Assault
1. Section 349 defines Force and Section 350 defines Criminal Force.	1. Section 351 defines Assault.
2. Physical contact exists.	2. There exists no physical contact.
3. It is an application of criminal force.	3. It is an attempt of criminal force (or incohonate/ incomplete criminal force).
4. Criminal force includes assault.	4. Every assault may not include criminal force.
5. The offence of criminal force is more serious, when compared to the offence of assault.	5. It is less serious, when compared to the offence of criminal force.

Punishment for assault or criminal force otherwise than an grave provocation (Sec.352): Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation: Grave and sudden provocation will not mitigate the punishment for an offence under this section. If the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

This section provides punishment for assault or criminal force, otherwise than on grave and sudden provocation with imprisonment of either description for three months, or with fine which may extend to five hundred rupees, or with both.

Ingredients: It must be proved that:

(1) The accused made a gesture or preparation to use criminal force;

(2) The accused knew that it was likely that such gesture or preparation to use criminal force would cause apprehension that such assault or use of force would be done; and

(3) That no grave or sudden provocation was received from the complainant.

To constitute the offence of the use of criminal force it is not necessary that the offender had any particular implement in his hand.

The offence is non-cognizable, bailable, compoundable and triable by any Magistrate.

Assault or criminal force to deter public servant from discharge of his duty (Sec.353): "Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Assault or criminal force to woman with intent to outrage her modesty (Sec.354): "Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

Sexual harassment and punishment for sexual harassment (Sec.354A) (inserted by Act.13 of 2013, Sec.7 (w.e.f. 3.2.2013)):

(1) A man committing any of the following acts—

i) physical contact and advances involving unwelcome and explicit sexual overtures; or

ii) a demand or request for sexual favours; or

iii) showing pornography against the will of a woman; or

iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment

of either description for a term which may extend to one year, or with fine, or with both.

Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pornography – Punishment – Imprisonment which may extend to 3 years or with fine or with both – Cognizable – Bailable – Triable by any Magistrate.

Sexual harassment of the nature of making sexually coloured remark – Punishment – Imprisonment which may extend to 1 year or with fine or with both – Cognizable – Bailable – Triable by any Magistrate.

Assault or use of criminal force to woman with intent to disrobe (Sec.354B) (inserted by Act 13 of 2013, Sec.7 (w.e.f. 3.2.2013)): "Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine."

Punishment – Imprisonment of not less than 3 years but which may extend to 7 years and with fine – Cognizable – Non-bailable – Triable by any Magistrate.

Voyeursim (Sec.354C) (inserted by Act.13 of 2013, Sec.7 (w.e.f. 3.2.2013)): "Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine."

Explanation 1: For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the

circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2: Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Para I: Punishment – Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction – Cognizable – Bailable – Triable by any Magistrate.

Para II: Punishment – Imprisonment of not less than 3 years but which may extend to 7 years and with fine for second or subsequent conviction – Cognizable – Non-bailable – Triable by any Magistrate.

Stalking (Sec.354D) (inserted by Act.13 of 2013, Sec.7 (w.e.f. 3.2.2013)): (1) Any man who—

i) Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Part I: Punishment – Imprisonment upto 3 years and with fine for first conviction – Cognizable – Bailable – Triable by any Magistrate.

Part II: Punishment – Imprisonment upto 5 years and with fine for second or subsequent conviction – Cognizable – Non-bailable – Triable by any Magistrate.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation (Sec.355): Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person (Sec.356): Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine a person (Sec.357): "Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Assault or criminal force on grave provocation (Sec.358): "Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished

with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both."

Explanation: The last section is subject to the same *Explanation* as section 352.

6. KIDNAPPING, ABDUCTION, SLAVERY AND FORCED LABOUR

(Sections 359 to 374)

Sections 359 to 374 (including Sections 363A, 364A, 366A, 366B and 370A) of the Indian Penal Code, 1860 deal with the offences of Kidnapping and Abduction. Section 359 deals with kinds of Kidnapping; Section 360 deals with Kidnapping from India; Section 361 deals with Kidnapping from lawful guardianship; Section 362 prescribes Abduction; Section 363 provides for Punishment for kidnapping; Section 363A deals with Kidnapping or maiming a minor for purposes of begging; Section 364 prescribes Kidnapping or abducting in order to murder; Section 364A deals with Kidnapping for ransom, etc.; Section 365 prescribes Kidnapping or abducting with intent secretly and wrongfully to confine person; Section 366 deals with Kidnapping, abducting or inducing woman to compel her marriage, etc.; Section 366A deals with Procuration of minor girl; Section 366B prescribes Importation of girl from foreign country; Section 367 provides for Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.; Section 368 deals with Wrongfully concealing or keeping in confinement, kidnapped or abducted person; Section 369 prescribes Kidnapping or abducting child under ten years with intent to steal from its person; Section 370 deals with Trafficking of person; Section 370A deals with Exploitation of a trafficked person; Section 371 provides for Habitual dealing in slaves; Section 372 deals with Selling minor for purposes of prostitution, etc.; Section 373 provides for Buying minor for purposes of prostitution, etc.; and Section 374 deals with Unlawful compulsory labour.

Kidnapping and Abduction (Sections 359 to 369): According to Tomlin's Law Dictionary, 'Kidnap' means, "the forcible abduction and conveying away of a man, woman or a child." Kidnapping means 'child stealing' or taking away a girl below the age of 16

years or a boy below the age of 18 years from the lawful custody of his/her parent or guardian. However, kidnapping is not confined to child stealing, but extends to all. 'Abduct' means "compelling or inducing a person to go from any place."

1. KIDNAPPING

Sections 359 to 361 deal with kidnapping. Section 359 classifies kidnapping into two kinds. Section 360 deals with kidnapping from India and Section 361 deals with kidnapping from lawful guardianship. Section 363 provides punishment for kidnapping. Section 362 deals with Abduction. Sections 364 to 369 deal with kidnapping or abducting for different purposes viz., to commit murder, to confine wrongfully, to compel a woman to marry, procuration of minor girl, importation of minor girl from foreign country, to subject the person to grievous hurt, slavery etc., to wrongfully conceal the kidnapped or abducted person, to kidnap a child below 10 years with intent to steal from its person etc.

Kidnapping: Meaning: The term 'Kidnapping' literally means "carrying away a person against his/her will or against the will of the guardian in case of a minor."

The term 'Kidnapping' is derived from the word 'kid', which means child, and 'nap', which means "to steal". The word 'kidnapping' means "child stealing". However, it is not confined or restricted to child stealing. It extends to all.

Kinds of Kidnapping (Section 359): According to Section 359, kidnapping is of two types, viz.,

1. Kidnapping from India (Section 360); and
2. Kidnapping from lawful guardianship (Section 361).

1. Kidnapping from India (Section 360): It means carrying away a person (conveying a person) beyond the territorial limits of India against its consent. It is an offence under Section 360, if a boy below the age of 16 years and a girl below the age of 18 years is conveyed beyond the limits of India even with his/her consent.

2. Kidnapping from Lawful Guardianship (Section 361): According to Section 361 I.P.C. enticing or taking away of a minor

girl below 18 years of age, or a minor male below 16 years of age or any person of unsound mind from the lawful custody without the consent of such guardian, is called 'Kidnapping'.

There is an exception to this Section, which provides that this Section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate son or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Essentials: To constitute the offence of kidnapping under Section 361, the following ingredients are to be satisfied:

1. Enticing or taking away of a minor male below 16 years or female below 18 years or a person of unsound mind.
2. Taking away or enticing must be from the lawful guardianship.
3. Without the consent of the lawful guardian.

The word 'taking' means "causing to go". 'Enticing' means "taking by inducement". The words 'taking and 'enticing' used in the offence (of kidnapping) have slight difference in meaning, but have the same application to determine guilt of the offence.

Relevant cases on this point are:

***Ram Das vs. State of M.P.*, AIR 1970 SC 864:** In this case, the girl compelled the accused to marry and got the marriage registered. When she informed the same, her father locked her in a room. She broke open the room and went to stay with the accused.

The Court acquitted the accused since there was no enticing or taking to constitute the offence.

***Varadarajan vs. State of Madras*, AIR 1965 SC 942:** The Supreme Court held in this case that the words 'taking and enticing' have the same meaning for the purpose of Section 361, though the meaning of the words is not the same.

In the instant case, a 16 year old girl voluntarily fell in love with the accused and got the marriage agreement registered. The

Supreme Court held that, though she was a minor girl, the offence would not amount to kidnapping since there was no taking or enticing.

With regard to the expression lawful guardian, it includes any person, who is having the care and custody of a minor.

Abdul v. Emperor **[AIR 1928 Mad. 525]:** In this case, the accused wrote several letters to the minor girl alluring her to come away from her father's house. The Court held that the accused was guilty of the offence of kidnapping from lawful guardian.

Bhagavan Paanigrahi v. State **[1989 Cr.L.J 103]:** In this case, a minor girl aged sixteen years, came from a village for education. Her father used to visit her monthly once or twice and was looking after her necessities. She stayed in a rented room. She came into contact with the accused. Both of them went away from that town to another place with an intention to get married. The consent of the minor girl was not considered and the court convicted the accused under Section 361 as there was no guardian's consent.

Distinction between kidnapping from India and kidnapping from lawful guardianship:

1) A person of any age can be kidnapped from India while only a minor (under 16 years if a male and 18 if a female) and a person of unsound mind can be kidnapped from lawful guardianship.

2) Want of consent of the person kidnapped or legally authorised to consent is essential for kidnapping in India. But, consent of the person kidnapped is immaterial in kidnapping from lawful guardianship.

3) Kidnapping from India is a continuing offence, whereas kidnapping from lawful guardianship is not a continuing offence.

4) Kidnapping from India can be abetted while kidnapping from lawful guardianship cannot be abetted.

Punishment for Kidnapping (Section 363): Section 363 prescribes punishment for kidnapping. Whoever kidnaps any person

from India or from lawful guardianship shall be punished with imprisonment up to 7 years and also liable for fine.

2. ABDUCTION

Abduction means compelling or inducing a person to go from any place. According to Blackstone, "Abduction in general signifies the act of illegally taking or leading away, carrying off by force a child, ward, voter or wife. This may be by fraud, persuasion, or open violence." In a more restricted sense it is confined to the taking of females for the purpose of marriage, concubinage, or prostitution (Bouvier: 4 step. Comm. 84).

Section 362 of I.P.C. defines the offence of abduction as 'whoever by force compels, or by any deceitful means induces any person to go from any place is said to abduct that person'.

Essentials: To constitute Abduction,

i) There must be forcible compulsion or inducement by deceitful means; or

ii) The object of such compulsion or inducement must be the going of the abducted person from any place.

Aggravated forms of Kidnapping or Abduction (Sections 363A to 369):

1. Kidnapping or maiming a minor for purposes of begging (Sec.363A): Section 363A of the Indian Penal Code provides that:

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging, shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped

or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section—

a) "begging" means—

i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise.

ii) Entering on any private premises for the purpose of soliciting or receiving alms;

iii) Exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of herself or of any other person or of an animal;

iv) Using a minor as an exhibit for the purpose of soliciting or receiving alms—

b) "minor" means—

i. In the case of a male, a person under sixteen years of age; and

ii. In the case of a female, a person under eighteen years of age.

Section 363A of the Code was added by the Amendment Act No.52 of 1959. Its main object is "to put down effectively the evil of kidnapping of children for exploiting them for begging". Prior to this amendment there was no special provision for deterrent punishment for the greater evil of maiming of children so as to make them objects of pity. This section provides for deterrent punishment for the offence of kidnapping of a minor for purposes of begging.

The offence under Section 363A is cognizable and warrant should ordinarily issue in the first instance. It is neither bailable non compoundable. It is triable by the Magistrate of the first class and the Court of Session.

2. Kidnapping or abducting in order to murder (Sec.364): Section 364 of the Indian Penal Code provides that "Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations:

a) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this Section.

b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this Section.

Section 364 of the Code will apply if a person has been abducted with intention that he be murdered. The actual murder of the person is not required. It is sufficient that there was abduction with intent to murder. If no evidence is available on this score, the accused cannot be convicted under this section.

The offence under Section 364 is cognizable and warrant should, ordinarily issue in the first instance. It is both non-bailable and non-compoundable and is triable exclusively by the Court of Session.

3. Kidnapping for ransom, etc. (Sec. 364A): Section 364A of the IPC provides that "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or International inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life and shall also be liable to fine.

Section 364A was inserted by the Criminal Law (Amendment) Act, 1993 and further amended by the Indian Penal Code (Amendment) Act 1995.

Malleshi v. State of Karnataka **[2004 Cr.L.J 4645 (SC)]**: In this case, the Supreme Court held, that the demand of ransom was clearly conveyed to victim though actually it was not made to his father who would ultimately have made payment. The person who pays ransom is not determinative. The conviction under Section 364A by the Trial Court was proper and only because demand was not conveyed to father of victim the case does not come out of purview of Section 364A of Indian Penal Code.

The offence under Section 364A is cognizable, non-bailable, non-compoundable and triable by the Court of Sessions.

4. Kidnapping or abducting with intent secretly and wrongfully to confine person (Sec.365): Section 365 of the Indian Penal Code provides that "Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 365 comes into play when a person kidnaps or abducts another with intention to secretly and wrongfully confine him. Such an intention of the kidnapper or abductor has to be judged from the facts and circumstances of the case at hand.

The offence under Section 365 is cognizable, non-bailable and non-compoundable and is triable by a Magistrate or Magistrate of the first class.

In *Shaik Ramjan v. State* **[1999 Cr.L.J 2161 (AP)]** if has been observed that there was ample evidence to show that the victim was taken away under deceit and then sold to brothel house. She was not a minor at the time of the incident. Therefore, the accused could not be convicted under Sections 366 or 372. They could be convicted under Section 365 which is in a way lesser offence and carries a lesser punishment than Section 366A or Section 372. The court suggested that it was for the legislature to address such situation.

5. Kidnapping, abducting or inducing woman to compel her marriage, etc. (Sec.366): Section 366 of the Indian Penal Code provides that: "Whoever kidnaps or abducts any woman with

intent that she may be compelled or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

The offence under Section 366 is cognizable, non-bailable, non-compoundable and is exclusively triable by the Court of Session.

6. Procuration of minor girl (Sec.366A): Section 366A of the Indian Penal Code provides that: "Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

Section 366A is inserted in IPC in the year 1923 in pursuance of the International Convention for Suppression of the Traffic in Women and Children. It intends to punish imports of girl for prostitution.

The offence under Section 366A is cognizable, non-bailable, non-compoundable and is exclusively triable by the Court of Session.

7. Importation of girl from foreign country (Sec.366B): Section 366B of IPC provides that: "Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be

punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

Section 366B, along with Section 366A was inserted in the IPC in the year 1923 in pursuance of the International Convention for Suppression of the Traffic in Women and Children. Section 366B is intended to punish the export and import of girls for prostitution.

Section 366B makes it an offence to import a girl under the specified age from any foreign country or the State of Jammu & Kashmir with intent or knowledge that she would be forced or seduced to illicit intercourse with another person.

This offence under Section 366B is cognizable, non-bailable and non-compoundable and is exclusively triable by the Court of Session.

Article 23 of the Constitution of India prohibited traffic in human beings. After coming into force of the Constitution of India this section was amended to bring it in accord with the changed circumstances.

8. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc. (Sec.367): Section 367 of the IPC provides that: "Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The offence under Section 367 is cognizable, non-bailable and non-compoundable and exclusively triable by the Court of Session.

9. Wrongfully concealing or keeping in confinement, kidnapped or abducted person (Sec.368): Section 368 of the IPC provides that: "Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or

knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement."

The offence under Section 368 is cognizable, non-bailable, non-compoundable and triable by the Court by which the kidnapping or abduction is triable.

Pyare Lal v. State of UP **[AIR 1987 SC 852]:** In this case, where the complicity of the accused in selling the wife of the co-accused was established and the buyer raped and killed her, a conviction under Section 368 was upheld by the Supreme Court.

10. Kidnapping or abducting child under ten years with intent to steal from its person (Sec.369): Section 369 of the IPC provides that: "Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 369 provides punishment for kidnapping or abducting a child with the intention of taking movable property from the person of such child.

The offence under Section 369 is cognizable, non-bailable, non-compoundable and is triable by a Magistrate of the first class.

In view of the above, it is clear that, abduction by itself is not an offence. Abduction with intent to commit an offence i.e., to rob or to murder, is an offence. It is an offence when it is committed in circumstances mentioned in Sections 364 to 368 I.P.C. (364: to Commit Murder; 365: Kidnapping or Abducting to wrongfully confine; 366: Kidnapping or abducting or inducing a woman to compel her marriage; 366A: Procuration of a minor girl or inducing a minor girl to do an act, which makes her to have sexual intercourse with another; 366B: Importing a girl below 21 years from foreign Country or State of J&K* for involving in sexual intercourse; 367: Kidnapping or abducting to subject the person to grievous hurt, slavery etc.; 368: Wrongfully concealing or keeping in confinement).

Punishment: Sections 364 to 368 provide for punishments for abduction under different instances. Section 364: Life

* See the J&K Reorganisation (Removal of Difficulties) Order, 2019.

imprisonment or **R.I.** upto 10 years; Section 365: 7 years imprisonment and also fine; Section 366: 10 years imprisonment and also fine; Section 366A: 10 years imprisonment and also fine Section 366B: 10 years imprisonment and also fine; Section 367: 10 years imprisonment and also fine.

Distinction between Kidnapping and Abduction

Kidnapping	Abduction
1. Kidnapping from lawful guardianship is, in respect of a minor or unsound person.	1. Abduction is in respect of any person.
2. The person is removed out of lawful guardianship.	2. It is not necessary.
3. Intention is not relevant.	3. Intention is relevant.
4. It is a complete offence and not a continuing offence.	4. It is a continuing offence.
5. Kidnapping is a substantive offence.	5. Abduction itself is not an offence and is not punishable by itself.
6. Intention of the kidnapper is immaterial for the offence.	6. Intention of the abductor is an important factor in determining guilt of the accused.
7. In kidnapping there must be taking or enticing from a lawful guardian.	7. In abduction the question of taking or enticing does not arise.

7. SEXUAL OFFENCES
(RAPE, CUSTODIAL RAPE AND GANG RAPE)
(Sections 375, 376, 376A to 376E)

The word 'rape' is derived from the Latin term ***'rapio'*** which means "to seize". Rape is a sexual offence. Sections 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and 376E deal with the offence of Rape. Section 375 defines Rape. Section 376 prescribes Punishment for sexual assault. Section 376A deals with Punishment for causing death or resulting in persistent vegetative state of victim. Section 376AB deals with punishment for rape on woman under twelve years of age. Section 376B deals with Sexual intercourse by husband upon his wife during separation. Section 376C prescribes

Sexual intercourse by a person in authority. Section 376D defines Gang rape. Section 376 DA & 376DB deals with punishment for gang rape on woman under sixteen years of age and twelve years of age respectively. Section 376E deals with Punishment for repeat offenders.

Rape: Meaning: Rape simply means "having sexual intercourse by a man with a woman against her will or consent." Sexual intercourse with or without the consent of a girl below the age of 18 years also amounts to rape. However, sexual intercourse by a man with his wife who is below 15 years of age is no offence (not a rape).

At the time of passing of the Indian Penal Code, 1860, Section 375 defines rape and Section 376 prescribes punishment for the offence of rape. The Criminal Law (Amendment) Act, 1983 added/ inserted to the Code Sections 376A to 376D, which deal with custodial rape. Further, the Criminal Law (Amendment) Act, 2013 has substituted new sections for Sections 375, 376, 376A, 376B, 376C, 376D and 376E of the Indian Penal Code, 1860. Criminal Law (Amendment) Act 2018 has amended S. 166A, 228A, 376, 376E and inserted new sections 376AB, 376DA & 376DB.

Rape (Section 375): Section 375 as substituted by the Criminal Law (Amendment) Act, 2013 (13 of 2013), Sec.9 (w.e.f. 3.2.2013), A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person

under the circumstances falling under any of the following seven descriptions—

First: Against her will.

Secondly: Without her consent.

Thirdly: With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly: With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly: With or without her consent, when she is under eighteen years of age.

Seventhly: When she is unable to communicate consent.

Explanation 1: For the purposes of this section, "vagina" shall also include *labia majora.*

Explanation 2: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1: A medical procedure or intervention shall not constitute rape.

Exception 2: Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Prior to substitution by S.9 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3.2.2013), Section 375 stood as: A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions—

First: Against her will.

Secondly: Without her consent.

Thirdly: With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly: With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly: With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly: With or without her consent, when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

State Amendments:

Manipur: The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983).

(a) in clause fifthly for the word "sixteen" substitute the word "fourteen" and

(b) in he Exception, for the word "fifteen" substituted the word "thirteen".

In pursuance of the Criminal Law (Amendment) Act, 2013, the Legislature sought to give a broader meaning to the offence of rape. Prior to the amendment, the offence of rape under Section 375 was confined to an act of sexual intercourse. Whereas, after the Amendment Act of 2013, the offence of rape under Section 375 constitutes/includes any one of the following acts—

(a) penetration of accused's penis, to any extent, into the vagine, mouth, urethra or anus of a woman or making the victim to do so with him or any other person; or

(b) insertion, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or making her to do so with him or any other person; or

(c) manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or making her do so with him or any other person; or

(d) application of accused's mouth to the vagina, anus, urethra of a woman or making her to do so with him or any other person;

As a result of these changes, a person can be liable under this offence not only when he himself actively participates in the offence, but also when he passively participates in the offence by causing a woman to do any of the above mentioned acts with another person.

Due to the detailed and descriptive nature of the definition of rape now given in the amended provision, the earlier ***Explanation*** whereby the word 'penetration' was explained, has now been omitted.

In addition to the above mentioned, the words 'vagina' and 'consent' have been elaborated and given a definite meaning with the aid of the newly added ***Explanations 1 and 2.***

Ingredients: To constitute rape, the following ingredients are to be satisfied:

1. Sexual intercourse by a man with a woman.
2. The sexual intercourse must be under circumstances falling under any of the seven Clauses of the Section.

Sexual Intercourse: To constitute this offence sexual intercourse by a man with a woman is necessary. A 'man' is defined by section 10 of the Code as a male human being of any age. Thus a boy above 12 years of age is capable of committing rape under this section, whereas a boy below 12 but above 7 years of age enjoys a qualified immunity.

Ram Kripal S/o Shyam Lal Charmakar v. State of Madhya Pradesh **[2007 II Cri. L.J 2302 (SC)]:** In this case, the victim had gone to field to collect grass. On her way back accused obstructed her and proposed for sexual intercourse. On her refusal accused forcibly committed sexual intercourse. The evidence of victim and medical evidence confirmed fact of penetration of his male organ. It was held that in case of offence of rape penetration of male organ in female organ is a *sine qua non* which was satisfied in this case and hence conviction of accused for offence of rape was proper.

Against her will: Clause (1) of this section operates where the woman is in possession of her sense and therefore, capable of consenting. It was held in ***State of Maharashtra v. M.N. Mardikar*** **[AIR 1991 SC 207]**, that the right of privacy is included in right to live as guaranteed by Article 21 of the Constitution and a woman of easy virtue is entitled to privacy as and when she likes. She is fully entitled to protect her person if an attempt is made to violate it against her wish.

Without her consent: This clause operates where a woman is insensible whether because of the influence of drink or drugs or any other cause, or is so imbecile that she is incapable of giving any rational consent. Consent of the woman must have been obtained prior to the act. It would be no defence that the woman consented after the act.

Every act done "against the will" of a woman, is done 'without her consent' but an act done 'without the consent' of a woman is not necessarily "against her will". The expression

'against her will' imports that the act is done in spite of the opposition of the woman to the doing of it. Where a man had carnal knowledge of a girl's imbecile mind and it was found that the act was without her consent as she was incapable of giving consent because of the defect of understanding, it was held that the man was guilty of rape. The consent of a woman obtained by putting her in fear of death or of injury is not consent at all. A sleeping woman cannot consent. Therefore, where a man had carnal knowledge of a woman while she was asleep, he would be guilty of rape. So also consent given by a woman of unsound mind or an intoxicated woman is no defence. Where a man made a girl of 13 years quite drunk, and whilst she was insensible violated her person, it was held to be a case of rape.

With her consent where consent is obtained by putting a woman in fear of death or hurt:

The fear which prompts a woman to give her consent must be of the kind stated in clause (3) of this section, i.e., consent must have been obtained by putting a woman in fear of death or of hurt.

With or without her consent: Sexual intercourse with a woman with or without her consent when she is under 18 years amounts to rape.

Mana Ramachandra Jadhav v. State of Maharashtra [1984 **Cri.L.J. 852 (Bom.)]:** In this case, the prosecutrix left her mother's house and joined the accused because her mother has turned down the proposal of her marriage with the accused on the ground that she was too young. While she was with the accused he had sexual intercourse with her against her will. The act intercourse with the prosecutrix will be covered by this clause.

***Rafiq v. State of U.P.,* [AIR (1980) 4 SCC 262]:** In this case, a middle aged Bal Sewika was raped by the appellant when she was sleeping in a girls school. The next day she narrated the incident to the Mukhya Sewika of the village and the appellant was convicted even in absence of injuries on the person of the victim. The Trial Court convicted the accused with seven years imprisonment and the same was confirmed by the High Court and also by the Supreme Court.

The accused to be guilty of the offence, the prosecution should prove that, the offence is committed without the consent of the woman. If the prosecution fails to prove, the accused may be acquitted.

***Pratap Misra and Others vs. The State of Orissa*, AIR 1977 SC:** A pregnant woman was raped by three persons. Seven months later, abortion took place. Medical evidence showed that immediate abortion would have taken place if three of the accused raped her one after another. Further, absence of injuries on the private part of the accused and the lady made it clear that she was a consenting party. Hence, the accused persons were acquitted.

In most of the cases of rape, the accused pleads consent as a defence and gets acquittal. In *Madhura Rape Case* – a girl was raped by two policemen in the Police Station. The Trial Court acquitted the accused, but was convicted by the High Court. On appeal, the Supreme Court acquitted the accused.

Later, the Indian Evidence Act, 1872 was amended and Section 114A has been inserted. According to Section 114A, where rape is alleged, the Court presumes that no consent was given by the victim. After the inception of Section 114 A, the burden of proving consent of the victim is shifted from the prosecution to the accused/defence counsel. Now, the decision of Supreme Court in *Madhura Rape Case* would be otherwise.

Marital Rape: The exception to Section 375 states that non-consensual sexual intercourse by a man with his own wife, if she is over 15 years, does not amount to rape. It, thus, keeps outside the ambit of 'rape' a coercive and non-consensual sexual intercourse by a 'husband' with his wife (above 15 years of age) and thereby allows a 'husband' to exercise, with impunity, his marital right of (non-consensual or undesired) intercourse with his wife. It is believed that the husband's immunity for marital rape is premised on the assumption that a woman gives forever her consent to the husband for sexual intercourse. It also aims at the preservation of family institution by ruling out the possibility of false, fabricated and motivated complaints of rape by wife against her husband and the pragmatic procedural difficulties that might arise in such a legal proceeding.

The question of consent to the act done does not arise where the girl is married to a man. But, in such a case, a certain amount of force may be justified on the ground of her previous consent to marriage. Where a husband had intercourse with his wife without her consent after a petition for divorce had been presented by her, it was held that the wife's implied consent to marital intercourse not having been revoked by act of the parties by an act of the court, the husband could not be held guilty of rape.

However, on two occasions, a husband can be convicted for the offence of rape, and such occasions are—

i) If a husband commits intercourse with her own wife, who is living separately from him, it is a rape;

ii) If a husband commits intercourse with his own wife, who is under the age of fifteen years, it becomes rape.

Prior to substitution by S.9 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3.2.2013), Section 376 stood as under:

Section 376: (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

a) being a police officer commits rape—

i) within the limits of the police station to which he is appointed; or

ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

e) commits rape on a woman knowing her to be pregnant; or

f) commits rape on a woman when she is under twelve years of age; or

g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1: Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2: "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3: "Hospital" means the precincts of the hospita and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Punishment for Sexual Assault (Section 376): (1) Whoever except in the cases provided for in sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than [1][ten] years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

a) being a police officer, commits rape—

i) within limits of the police station to which such police officer is appointed; or

ii) in the premises of any station house; or

iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

c) being a member of the armed forces deployed in an area by the Central or a State Government, commits rape in such area; or

d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

g) commits rape during communal or sectarian violence; or

1. Subs. for "seven" by Act No. 22 of 2018, w.r.e.f. 21-4-2018.

h) commits rape on a woman knowing her to be pregnant; or

i) [1][xxx]

j) commits rape, on a woman incapable of giving consent; or

k) being in a position of control or dominance over a woman, commits rape on such woman; or

1) commits rape on a woman suffering from mental or physical disability; or

m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation: For the purposes of this sub-section,—

a) *"armed forces"* means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

b) *"hospital"* means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

c) *"police officer"* shall have the same meaning as assigned to the expression-"police" under the Police Act, 1861 (5 of 1861);

d) *"women's children's institution"* means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

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1. **Clause (i) omitted by Act No. 22 of 2018, w.r.e.f. 21-4-2018. Prior is omission it read as below:**
"(i) commits rape on a woman when she is under sixteen years of age; or"

[1][(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.]

CUSTODIAL RAPE

The punishment for rape/sexual assault has been classified depending upon the gravity of the offence. However, the discretion left with the court under sub-section (1) to mention adequate and special reasons for imposing a sentence of imprisonment of less than seven years for the offence of rape has been omitted by the amendment.

Further, for the convicts who fall within any of the clauses (a) to (n) of sub-section (2), because of their special position by virtue of which they can exert influence upon the victim, the punishment prescribed is of rigorous imprisonment for not be less than ten years which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life. In addition, the convict shall also be liable to pay fine.

'Custody' means 'care keeping'; charge (as custody of children and minors); judicial or penal safe keeping (as custody of prisoner; imprisonment; care; guard). When a woman is under the guard or confinement or care or charge of a man, and that man commits intercourse with her with or without her consent, is called 'custodial rape.'

Sections 376A, 376B, 376C and 376D, inserted/added to the Indian Penal Code, 1860 by the Criminal Law (Amendment) Act, 1983 deal with custodial rape. Recently, the Criminal Law (Amendment) Act, 2013 substituted these sections with revised provisions and also added Section 376E prescribing punishment for repeat offenders.

According to Section 376(2) custodial rape is categorised as detailed below—

1. Police Officer: A police officer who commits rape within the limits of the police station to which he is appointed; or in the premises of any station house whether or not situated in the

1. Ins. by Act No. 22 of 2018, w.r.e.f 21-4-2018.

police station to which he is appointed; or on a woman in his custody or in the custody of police officer subordinate to him, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. [Sec.376(2)(a)]

Police officers can induce, coerce helpless women under custody. In ***Tukaram v. State of Maharashtra*** **[AIR 1979 SC 185]** (The Mathura Case), Mathura was a 14-16 year old (a minor) Harijan orphan girl. Gama, brother of Mathura lodged a report at police station Desai Gunj, alleging that Mathura had been kidnapped by Nushi, her husband Laxman and Ashok. During the investigation of the case, Mathura, along with others, was detained in police custody. The report was recorded by Head Constable Baburao. After Baburao had gone away. Mathura, Nushi, Gama and Ashok started leaving the police station. Ganpat, constable on duty, however, asked Mathura to wait at the police station and told her companions to move out. The direction was complied with. In the late hours of the night Ganpat had taken her to the Chhapatri and raped her in spite of protests and stiff resistance on her part. Then another constable Tuka Ram fonded and tried to rape her but being too heavily drunk did not succeed. He did molest her, though. All this happened on 26 March, 1972.

On the trial the Sessions Judge of Chandrapur freed the alleged rapists as he found Mathura 'a shocking liar' and as rape had not been proved. On appeal the Bombay High Court (Nagpur Bench) reversed the finding of the Sessions Judge and found Ganpat guilty of rape and sentenced him to five years rigorous imprisonment.

The other constable Tuka Ram was sentenced to one year's rigorous imprisonment for molesting the woman. The High Court held that Mathura could hardly have consented to intercourse in the circumstances of threats from the policemen and the sexual intercourse in question was forcible and amounted to rape.

Again the judgment of the Bombay High Court, the accused appealed to the Supreme Court, which, on September 15, 1978, rejected the High Court's contentions. It held, among other reasons' that only 'fear of death or hurt' can vitiate consent for sexual

intercourse and no such finding was recorded and that there was not enough circumstantial evidence of Ganpat's guilt. In the result, the Supreme Court held that the appellants were not guilty and acquitted them of the charges.

The Supreme Court observed that Mathura was not subjected to any fear which may have led her to submit to the act and that there were no marks of injury on her person which showed that the whole affair was a peaceful one and that the story of stiff resistance having been put up by the girl is all false. It also observed that Mathura was not alone when Ganpat ordered her to stay and she could have resisted and appealed to her brother. Her conduct in meekly following Ganpat and allowing him to have his way with her to the extent of satisfying his lust in full made them feel that the consent in question was not a consent which could be brushed aside as 'passive submission.'

The judgment of the Supreme Court received great significance throughout India. The Supreme Court did not review the Mathura case. But not discussions were made in Parliament. As a result, the Criminal Law (Amendment) Act, 1983 was passed amending Sections 375 and 376. Sub-section (2) and Explanations were added. The scope of Sections 375 and 376 was widened.

State of Maharashtra v. Madhukar N. Mardikar [1991 (1) SCC 57]: In this case, the accused, a Sub-Inspector of Police arrested some prostitutes from a brothel house and confined them in Police Station and raped a prostitute. She lodged a complaint against him. The accused contended that, since the complainant was a prostitute, the provisions of rape would not be applicable to him. The trial Court did not agree with his contention and convicted him. On appeal, the High Court reversed the decision of the trial Court. On further appeal, the Supreme Court confirmed the decision of trial court and convicted the accused.

2. Rape by Public Servant with woman in his custody: A public servant, who takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life which shall mean

imprisonment for the remainder of that persons natural life, and shall also be liable to fine. [Section 376(2)(b)]

3. Rape by member of Armed forces: A member of the armed forces deployed in an area by the Central or a State Government commits rape in such area shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

***Explanation (a)*:** 'Armed forces' means the naval, military and air forces and includes any member of the Armed Forces constituted under any Law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government. [Section 376(2)(c)]

4. Rape by Officer of jail, remand home, etc.: A person on management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or if a women's or children's institution, committed rape on any inmate of such jail, remand home, place or institution shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Women's or children's institution means an institution, whether called an orphanage or a home for neglected women or children or a women's home or an institution called by any other name, which is established and maintained for the reception and care of women or children. [Section 376(2)(d)]

5. Rape by a person in management of Hospitals: A person being on the management or on the staff of a hospital commits rape on a woman in that hospital shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to time. [Section 376(2)(e)]

Explanation (b): 'hospital' means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

6. Raping of Pregnant Woman: If a person commits rape on a woman knowing her to be pregnant shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for remainder of that person's natural life, and shall also be liable to fine. [Section 376(2)(h)]

Om Prakash v. State of Uttar Pradesh **[2006 Cr.L.J 2913 (SC)]**: In this case, the Supreme Court observed that for punishing an accused by application of Section 376(2)(e) [now Section 376(2)(h)] the prosecution has to establish that the accused knew that the victim was pregnant because it is for this reason that stringent punishment is prescribed for offence under Section 376(2)(e). What is necessary under this section is "certainty of knowledge and not merely possibility of knowledge. This is clear from the use of expression "Knowing her to be pregnant." As there is no evidence in 'knowing her to be pregnant,' the punishment of 10 years of imprisonment has been reduced to minimum sentence of 7 years prescribed under Section 376(1) IPC.

7. Raping a girl below the age of 16 years: If a person commits rape on a women when she is under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. [Section 376(2)(i)]

Nuvvula Kiran v. State of AP **[2004 Cr.L.J 1263 AP]**: In this case, the accused was son of tenant and alleged to have taken a girl of 5 years to terrace of house by stating that he will give her chocolates and committed rape. The victim had informed the commission of offence to her parents. Their evidence was corroborated by medical evidence. The Court held that conviction of accused under Section 376(2)(f) [now Section 376(2)(i)] was proper.

Sections 376A, 376B, 376C and 376D inserted to the Indian Penal Code, 1860 by the Criminal Law (Amendment) Act, 1983:

Section 376A: According to Section 376A, whoever has sexual intercourse with his wife during separation against the decree of judicial separation, custom etc., is punishable with imprisonment, which may extend to two years and shall also be liable to fine.

Section 376B: Section 376B prescribes punishment, which may extend to five years and also liable to fine for intercourse by a public servant with a woman in his custody/official position or induces or seduces any woman.

Section 376C: It provides punishment of five years imprisonment and also fine for intercourse by Superintendent of Jail, remand home or other place or custody with a woman in his custody.

Section 376D: Section 376D provides punishment of five years imprisonment and also fine for intercourse by any member of the management or staff of a hospital with any woman in that hospital.

Sections 376A, 376B, 376C, 376D and 376E inserted/ substituted by the Criminal Law (Amendment) Act, 2013. Section 376A prescribes punishment for causing death or resulting in persistent vegetative state of victim. Section 376B deals with sexual intercourse by husband upon his wife during separation. Section 376C prescribes sexual intercourse by a person in authority. Section 376D deals with gang rape and Section 376E deals with punishment for repeat offenders.

Punishment for causing death or resulting in persistent vegetative state of victim (Section 376A): "Whoever commits an offence punishable under sub-section (1) or sub-section (2) of Section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death."

Offence under Section 376A is cognizable, non-bailable and triable by Court of Session.

[1][**Punishment for rape on woman under twelve years of age (Section 376AB):** Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

Sexual intercourse by husband upon his wife during separation (Section 376B): "Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine."

Explanation: In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of Section 375.

Offence under Section 376B is cognizable (but only on the complaint of the victim), bailable and triable by Court of Session.

Sexual intercourse by a person in authority (Section 376C): "Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or
(b) a public servant; or
(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or
(d) on the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine."

Explanation 1: In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of Section 375.

1. Ins. by Act No. 22 of 2018, w.r.e.f 21-4-2018.

Explanation 2: For the purposes of this section, Explanation 1 to Section 375 shall also be applicable.

Explanation 3: "Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4: The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of Section 376.

Offence under Section 376C is cognizable, non-bailable and triable by Court of Session.

Gang Rape (Section 376D): "Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.

Prior to amendment in 2013, this Section was given as 376(2)(g)."

Offence under Section 376D is cognizable, non-bailable and triable by Court of Session.

In gang rape, if rape has been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention. The common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of the act and it could arise and be formed suddenly, but, there must be meeting of minds.

***Promod Mehta v. State of Bihar* [AIR 1989 SC 1475]:** In this case, four persons forced their entry into a house. They were charged with raping a young unmarried girl. Medical evidence supported the fact of rape. The conviction of all of them was upheld without it being necessary to show

whether all of them or which of them participated in the crime under Explanation 1 to clause (g) of sub-section (2) of Section 376 of IPC.

Bhupinder Sharma v. State of Himachal Pradesh **[AIR 2003 SC 4684]:** In this case, the Supreme Court held that it is not necessary for the prosecution to adduce clinching proof of a completed act of rape by each one of the accused on the victim (or each one of the victims where there are more than one) in order to find accused guilty of gang rape and convicted them under Section 376(2)(g).

The Supreme Court, further ruled that every member of such a group, acting in furtherance of common intention of the group by virtue of the deeming explanation, *per se* deserves the minimum sentence stipulated in Section 376(2). In ***Uttam Kumar v. State of Maharashtra*** **[(1991) Cr.L.J 1644 (Bom.)]**, has ruled that involvement of a group of persons is not necessary in gang rape.

[1]**[Punishment for gang rape on woman under sixteen years of age (Section 376DA):** Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

376DB. Punishment for gang rape on woman under twelve years of age: Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

Punishment for repeat offenders (Section 376E): "Whoever has been previously convicted of an offence punishable under Section

1. Secs. 376 DA and 376DB ins. by Act No. 22 of 2018, w.r.e.f 21-4-2018.

376 or Section 376A or Section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death."

Offence under Section 376E is cognizable, non-bailable and triable by Court of Session.

8. UNNATURAL OFFENCE (Section 377)

Section 377 deals with Unnatural Offence. It runs as follows— "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine."

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

The word 'sodomy' means carnal copulation committed by a human being with another human being per anus. Sodomy may be either homosexual or heterosexual. In case the parties are of the same sex, it will be termed as homosexual and if the parties are of opposite sex it will be called as heterosexual.

The term 'bestiality' means the sexual intercourse either by a man or by a woman carried out in any way with a beast. Voluntarily having carnal intercourse against the order of nature with any man, woman or animal is known as Unnatural Offence. Explanation to the Section provides that penetration is sufficient to constitute the offence. Seminal emission is not necessary. In the case of unnatural offence, consent of the victim is immaterial.

***Khandu vs. Emperor,* (AIR 1934 Lah 261):** In this case, the accused had carnal intercourse by placing his penis into the nostril of a bullock. He was convicted under this Section.

***Charanjit Singh vs. State of Himachal Pradesh,* (1986 Cr. L.J. 173):** In this case, the accused committed the offence of sodomy on one Ramesh Chand. They were going to particular destination in a truck and made halt at some place during the night. The accused made indecent overtures to Ramesh Chand. He kissed him and put his hand on the thigh and had carnal intercourse with him, even though he objected. The Sessions Court convicted the accused for the offence of sodomy. The High Court also upheld the findings of the Sessions Court and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-.

State of Karnataka v. Gowrishankara Swamy **[Times of India, Lucknow, 3 Feb. 2004]:** In this case, the mark of the Sri Siddagana Mutt al Kyatasandra, Tumkur district, Sri Gowrishankara Swamy was found guilty of sodomy on a 13 year old student staying in the mutt for education and lodging and was convicted under Section 377 IPC to 10 years rigorous imprisonment and fine of Rs.25 lakh.

Punishment is provided in the same Section as imprisonment for life of imprisonment or a term of 10 years and fine.

CASE COMMENT

(Offences affecting Human Body)

I. Cases: Discuss the facts and law laid down in the following cases:

1) *K.M. Nanavati vs. State of Maharashtra,* **AIR 62 SC 605** (N.U., April, 1999, Part-C,

Q.16, Marks: 20).

Ans.: Instant case refers to the offence of murder as explained under Sections 300 and 302

Of the Indian Penal Code, 1860.

Among the offences against the human body, the offence of murder is of great importance. Sections 299 to 304 I.P.C. deal with the offence of culpable homicide and murder.

Meaning: The term 'Homicide' means "Killing of human being (or causing the death of human being) by another human being. It may be –

i) Lawful.

E.g.: Execution of death sentence by Court of Law.

ii) Unlawful.

E.g.: Culpable Homicide (Sections 299 and 304).

Murder (Sections 300-303) and Rash and Negligent Homicide (Section 304A): There are two branches of culpable homicide namely:

1. Culpable Homicide or Culpable Homicide not amounting to Murder; and

2. Murder or Culpable Homicide amounting to Murder.

The present problem relates to Murder, or Culpable Homicide amounting to Murder. The word 'Murder' is derived from the Germanic word '**Morth**', which means "secret killing". Section 300 defines 'Murder' and Section 302 provides punishment for murder, which reads as follows:

Whoever commits murder shall be punished with death, or imprisonment for life, and shall be liable to fine.

Instant case, which attracts Sections 300 and 302 is explained below in detail.

***K.M. Nanavati vs. State of Maharashtra,* AIR 62 SC 605.**

Facts:

Nanavati, the accused in this case was a Naval Officer. His wife by name Sylvia had illicit contact with the deceased (Prem Bhagvan Das Ahuja). When the accused questioned his wife for indifferent attitude towards him, she made a confession that she had illicit contact with the deceased. The accused went to the residence of the deceased and told him that he would give divorce to his wife and asked him to marry her, for which he (deceased) refused. The accused brought a revolver from the ship and shot him dead and surrendered himself to the police.

Judgment: The Trial Court sentenced the accused to death under Section 302 and the same was confirmed by the High Court. On appeal, the Supreme Court altered the conviction to life imprisonment. His family members submitted mercy petition to the President of India under Art. 72 of the Constitution. Before the decision of the petition, Nanavati accepted the conviction of life imprisonment.

2) ***Bachan Singh vs. State of Punjab,* AIR 1980 SC 898** (N.U., April 1999, Part-C, Q.15, Marks:20).

Ans.: Instant case attracts Section 302, I.P.C., which prescribes/ provides punishment for murder.

Further, the constitutional validity of death sentence/capital punishment under Section 302 was questioned in this case.

Meaning: Among the offences against the human body affecting life, the offence of murder is of great significance in the Penal Code.

Section 299 to 304 deal with the offences of culpable homicide and murder. Homicide means "Killing of or causing the death of a human being by another human being." The term culpable means "criminal". It may be –

i) Lawful.

E.g.: Execution of death sentence by Court of Law.

ii) Unlawful.

E.g.: Culpable Homicide (Sections 299 and 304).

Murder (Sections 300-303) and Rash and Negligent Homicide (Section 304A): There are two branches of culpable homicide namely:

1. Culpable Homicide or Culpable Homicide not amounting to murder; and

2. Murder or Culpable Homicide amounting to Murder.

The present case attracts Section 302 I.P.C and the constitutional validity of capital punishment under Section 302 as detailed below:

Capital Punishment: It means "death sentence". There had been a great controversy as to the constitutional validity of death sentence. Section 302 prescribes death sentence or imprisonment for life in alternative.

Section 303 prescribes death sentence compulsorily in case of a life imprisonment convict, who is found guilty of committing murder, while undergoing the sentence of imprisonment for life. The Judge has no discretionary power and hence Section 303 was struck as unconstitutional by the Supreme Court in ***Mithu vs. State of Punjab,*** **(AIR 1983 SC 473).**

With regard to the imposition of capital punishment (death penalty) in other cases (i.e., other than Section 303) it is awarded in India in certain exceptional cases (Sections 121, 132, 194, 302, 305, 396 and 307) i.e., in rarest of the rare cases. Some countries have abolished the capital sentence.

The present case, which attracts Section 302 and the constitutional validity of death penalty is detailed below:

Bachan Singh vs. State of Punjab, **AIR 1980 SC 898**

Facts:

Bachan Singh, the accused/appellant in this case killed brutally two persons namely Durga Bhai and Veeran Bhai. He was prosecuted for murder under Section 302 I.P.C.

Judgment: The accused was sentenced to death by the Trial/ Sessions Court. On appeal, the High Court confirmed the death penalty. He preferred an appeal before the Supreme Court. Meanwhile, some writ petitions under Art. 32 of the Constitution were filed in the Supreme Court challenging that the death penalty under Section 302 I.P.C. is violative of Art. 14, 19 and 21 of the Constitution. The petitioners also contended that the death penalty is a very serious punishment and the power to award death sentence should not be conferred on the lower Courts and also contended that Section 302 I.P.C. should be struck down from I.P.C. since it provides death penalty as an alternative to the life imprisonment.

The Supreme Court, did not admit/agree with the above contentions and held by majority that the death penalty is not violative of Arts. 14,19 or 21 of the Constitution. The Court opined that, the rule is that normally the ordinary sentence is life imprisonment and death sentence is awarded in exceptional cases i.e., the rarest of the rare cases, and upheld the death sentence.

II. Problems:

1) Chengaiah who is father-in-law of one Yamuna and Ramulamma is her mother-in-law. One day Chengaiah started harassing the daughter-in-law Yamuna and continuously beating. Ramulamma was also present. Suddenly due to the blows of Chengaiah, Yamuna died. Whether Ramulamma is liable for punishment. (A.U., November/December 2001, Part-C, Q.2, Marks: 20).

Ans.: Instant problem refers to the offence of "Culpable Homicide or Culpable Homicide not amounting to murder". Section 299 of the Indian Penal Code, 1860 defines culpable homicide and Section 304 provides punishment for culpable homicide. This problem attracts Section 299 and Section 304 Part-I.

Now, write about the meaning of Homicide, Culpable Homicide with relevant Case Law ***(Kasim Abdulla Hafiz vs. State of Maharashtra,*** **(1998 (1) SCC 526 = AIR 1998 SC 1451).**

In view of the facts and circumstances furnished above, Chengaiah in the instant problem is guilty of the offence of culpable homicide or culpable homicide not amounting to murder under Section 299 and is punishable under Section 304, Part-I.

2) 'A' attempts to pull B's nose. 'B' prevents 'A' from doing so. 'A' becomes angry and in sudden and grave provocation kills 'B'. Has 'A' committed any offence.

(A.U. January 2002, Part-C, Q.1, Marks: 20).

Ans.: Instant problem refers to "Murder or Culpable Homicide amounting to murder" Sections 300 to 303 of the Indian Penal Code, 1860 deal with the offence of Murder. Section 300 defines murder and Section 302 provides punishment for murder.

Instant problem attracts Section 300, Exception 1 and Proviso 3 as furnished hereunder:

Write now, the meaning of homicide, culpable homicide in brief and murder in detail, provisions/content of Section 300, Exception 1 and the Provisos, which are subject to Exception 1 of Section 300 and the relevant illustration under Proviso 3. (Refer the topic Murder at P.No. 109 for the provisions of Section 300, Exception 1 and the Provisos).

In view of the facts and circumstances furnished above, A is guilty of murder under Section 300 (Exception 1, Proviso 3) and is liable for punishment under Section 302 I.P.C.

QUESTIONS AND HOW TO ANSWER

I) Short Questions:

Q) Kidnapping and Abduction (A.U. Model Q.P., Part-A, Q.3, Marks: 4).

Ans.: Write in brief (one page) about Kidnapping and Abduction.

Q) Wrongful Confinement (A.U., November/December 2001, Part-A, Q.8, Marks: 4).

Ans.: Write about Wrongful Confinement in brief.

Q) Assault (A.U. November/December 2000, Part-A, Q.7, Marks: 4).

Ans.: Write about Assault in brief.

II) Essay Questions:

Q) "All Murders are Culpable Homicides, but all Culpable Homicides are not Murders" –

Discuss with illustrations and rarest of rare cases. (A.U. Model Q.P., Part-B, Q.2,

Marks: 18).

Ans.: Instant phrase "All Murders are Culpable Homicides, but all Culpable Homicides

Are not Murders" is correct. The reason is:

1. Both the Murder and Culpable Homicides are primarily/ initially Culpable Homicides.
2. Every murder includes culpable homicide but a culpable homicide does not include murder.
3. A culpable homicide may or may not amount to murder.
   i) If it amounts murder, it is called "murder or culpable homicide amounts to murder."
   ii) If it does not amount to murder, it is called "culpable homicide or culpable homicide not amounting to murder."

LECTURE-XIII

OFFENCES AGAINST PROPERTY

(Sections 378-462)

Sections 378 to 462 of Indian Penal Code lay down the provisions relating to the offences against the property. This lecture covers the following offences namely –

1. THEFT

(Sections 378 to 382)

Meaning: Sections 378-382 of the Indian Penal Code deal with the offence of 'Theft'. Theft, simply means "taking away any movable property, intentionally and dishonestly without the consent of the owner/possessor."

Definition: Section 378 I.P.C. defines theft as "whoever, intending to take dishonestly any movable property out of the possession of any person without the person's consent, moves that property in order to such taking is said to commit theft."

Movable property is one, which can be moved from one place to another with human efforts without causing damage to such property.

E.g.: 'A' parked his cycle in front of his house. 'B' intentionally and dishonestly without A's consent has taken away the cycle, 'B' is said to have committed theft.

Subject matter of Theft: Explanation 1 to 5 of Section 378 provide for the subject matter of theft as follows:

1. Explanation 1 says that a thing so long as it is attached to earth (i.e., not movable property) is not the subject matter of theft. It becomes the subject matter, when it is severed from the earth.
2. Explanation 2 says that 'a moving effected by the same act which effects the severance may be a theft.'
3. Explanation 3 says that, a person is said to cause a thing to move by removing an obstacle, which prevents such moving.
4. Explanation 4 says, a person by any means causes an animal to move is said to move that animal.
5. Explanation 5 states that, the consent mentioned in the definition may be express or implied.

Illustrations:

i. A cuts down a tree on Z's ground, with intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

ii. A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

iii. A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

iv. A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Ingredients: To constitute theft, the following ingredients are to be satisfied:

i) Dishonest intention to take property.

ii) The property must be movable.

iii) Such property should be taken out of the possession of another person.

iv) There must be some moving of property in order to such taking.

v) It should be taken without the consent of that person.

i) Dishonest Intention: To constitute theft, the person alleged to have committed theft must have dishonest intention or evil intent to take/own the property (movable property) belonging to another.

ii) Movable Property: The subject matter/object/property subjected to theft must be a movable property, which can be moved from one place to another without any loss or decline in its value. Section 22 of the Indian Penal Code defines movable property as follows—

"The words 'movable property' are intended to include corporeal property of every description except land and things attached to the earth, or permanently fastened to any- thing attached to the earth."

iii) Out of possession: To constitute theft, the movable property must be taken out of the possession of its owner by the person alleged to have committed theft.

iv) Moves that property in order to such taking: It is, however, an essential ingredient of the offence of theft that the movable property which was the subject-matter of theft should have been moved out of the possession of any person without his consent. As it is obvious, that could be possible, only if the person moving the property had taken out of the possession of the person concerned and transferred it to his own possession in order to move it for the purpose of taking it dishonestly. It follows that transfer of possession of property however transient, is an essential ingredient of an offence of theft.

v) Without person's consent: If a person removes the property with dishonest intention of taking it without consent of the person concerned, theft is committed. Consent may be express or implied.

Punishment for Theft (Section 379): According to Section 379, the person guilty of theft shall be punished with imprisonment, which may extend to three years, or with fine or with both. Section 379 reads as follows—

"Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

***Selvaraj vs. State of Tamil Nadu,* (1998) (2) SCC 176:** In this case, the accused has stolen some money (Rs.1,420/-) from the bag of the complainant in a bus. The complainant did not identify the accused. The Trial Court convicted the accused. On appeal, the Madras High Court acquitted him on the ground that the confession made to the police is not admissible.

Theft in dwelling house, etc. (Section 380): Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

***Rainu v. Cram* [5 LRNag 3]:** In this case, a person breaks open a lock of a room occupied by his sister-in-law, and removed a box of ornaments belonging to her without her consent. He is liable to conviction under Sections 380 and 454, IPC, unless he proves that he was not animated by a dishonest intention and was ascertaining a *bona fide* claim of right.

Theft by clerk or servant of property in possession of master (Section 381): "Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Vallabhram v. Emperor [AIR 1926 Bombay 122]: In this case, a clerk of the *tahsil* office, who took official papers out of possession of his fellow clerk without consent of the concerned tahsildar to show them to an advocate of one of the parties to the case, was held guilty under Section 381.

Juggumath Singh v. R [(1865) 2 WR(Cr) 55]: In this case, some policemen stole a sum of money shut up in a box, and placed it in the Police Treasury building, over which they were mounting guard as sentinels, they were held to have committed an offence under Section 381 and not under Section 409.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft (Section 382): "Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Illustrations:

a) A commits theft of property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this Section.

b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Diwan Singh v. State of Madhya Pradesh [(1980) Cr.L.J 760 (MP)]: In this case, the court held that under Section 382, it was not necessary that hurt must be caused or an attempt to cause hurt must be made. If a person kept a knife with him and committed theft, then he is liable to be convicted under Section 382 even if he had no occasion to wield the knife or cause injury.

What is relevant is the preparedness of the accused in such a manner that he may come in his way of escaping or taking the stolen property away.

The offence under Section 382 is cognizable, and warrant should ordinarily issue in the first instance. It is both non-bailable and non-compoundable and is triable by a Magistrate of the first class.

2. EXTORTION

(Sections 383 to 389)

'Extortion' is a second form of offence dealing with deprivation of property. The term 'extortion' is derived from Latin term *'extorsion'*. In its widest sense it means, any oppression under pretence or colour of right. In a popular sense, it is used as equivalent to blackmailing or obtaining money by threats. But its ordinary and proper legal meaning is the taking of money or any valuable thing by any public officer by colour of his office, and otherwise than in good faith on a mistake as to the law, where none or less is due; or before it is due.

Section 383 of the Penal Code defines Extortion as follows:

"Whoever intentionally puts any person in fear of any injury and thereby dishonestly induces that person to deliver (to any person) any property or valuable or security or anything signed or sealed, which may be converted into a valuable security, is said to have committed an offence of extortion."

Illustrations:

(a) A, an editor threatens B, a politician to publish a defamatory statement unless he (B) gives him (A) money. A is said to have committed an offence of extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under

a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

To constitute extortion, there must be a threat by the accused. It is not necessary that the person threatening should receive the property.

Punishment for Extortion (Section 384): "Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The offence under Section 384 is cognizable but warrant should ordinarily issue in the first instance. It is non-bailable but not compoundable, and is triable by any Magistrate.

Relevant Case Law—

Akhoy Kumar vs. Jagatchander, **(27 Cal. 925):** In this case, a Sub-Inspector of Police wrongfully arrested a person and threatened that he would not be released unless money is paid. The Police Inspector was held guilty of the offence of extortion.

State v. Basavegowada **[1997 CrLJ 4386 (Kant)]:** In this case, the accused husband took his wife to a forest and obtained her ornaments under threat to kill her. The ornaments were subsequently recovered from him. He was held guilty of the offence of extortion, not robbery.

Chander Kala v. Ram Kishan **[AIR 1985 SCC 1268]:** In this case, the headmaster of a school called a lady teacher to a place where he was alone and induced her to sign three blank papers by threatening an attack on her modesty, the Supreme Court held that it amounted to an offence under Section 384.

R.S. Nayak v. A.R. Antulay and another **[1986 CrLJ 1922 (SC)]:** In this case, Chief Minister A.R. Antulay asked the Sugar

Cooperatives, whose cases were pending before the government for consideration, to make donations and promised to look into their cases. It was held by the Supreme Court that these facts do not constitute the offence of extortion as there was no evidence at all that the managements of the sugar cooperatives had been put in any fear and the contributions had been paid in response to threats.

Ramesh Chandra Arora v. State **[AIR 1954 SC 700]:** In this case, the accused had written letters to a person, enclosing photograph of his daughter in the nude and were of a character, which if made public, would undoubtedly compromise the reputation of the girl as well as her father. The accused demanded 'hush money' from him and threatened him stating that he would circulate the photographs to the relatives of the girl, if the money was not paid. He was convicted as he was guilty of extortion.

Distinction between Theft and Extortion

Theft (Section 378)	Extortion (Section 383)
1. Possession of movable property is obtained without the consent of the owner/possessor.	1. Possession of property is obtained by putting a person in fear of threat.
2. The subject matter is movable property.	2. Any property, movable or immovable is subject to extortion.
3. In theft, there is no force or compulsion.	3. In extortion, there is force or compulsion.

3. ROBBERY

(Sections 390, 392-394 and 401)

The word 'Rob' means "to plunder", or to "steal from" or "to deprive" or "to loot" or "to carry off as spoil" or "to pillage". It means "felonious taking from the person of another of money or goods against his/her will by force or inflicting fear." Thus, the term "robbery" means "felonious taking in cash or kind from another forciably or by inflicting fear." Robbery is either an aggravated form of theft or aggravated form of extortion. In other

words, in all robbery, there is either theft or extortion Section 390 defines robbery, which runs as follows—

Robbery: In all robbery there is either theft or extortion.

When Theft is Robbery: Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery: Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation: The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Section 390 enunciates that every robbery includes either theft or robbery and explains when theft becomes robbery and when extortion becomes robbery as stated below—

When Theft is Robbery: Theft becomes robbery, if the offender, at the time of committing the theft or in carrying away or attempting to carry away the property, voluntarily causes or attempts to cause to any person, death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

Illustration:

A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and, in order to committing of that theft has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

When Extortion is Robbery: The person, who committed the offence of extortion is said to have committed robbery, if the

accused at the time of committing extortion puts him (victim) in fear of death or hurt or wrongful restraint to himself or any other thereby inducing him to deliver the thing/property.

Illustration:

A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing extortion in his presence. A has therefore committed robbery.

Therefore, it is clear from the above, that, to constitute robbery, the offence must primarily be either theft or extortion.

Robbery = Theft + violence or fear of instant violence. OR

Robbery = Extortion + presence of the offender + fear of instant violence + immediate delivery.

Punishment for Robbery (Section 392): "Whoever commits robbery, shall be punished with imprisonment for a term, which may extend to ten years and also shall be liable to fine. If the robbery is committed on highway between Sunrise and Sunset, the imprisonment may be extended to fourteen years."

When murder and robbery are committed in the course of the same transaction by the same persons, the offence would fall under this section. A conviction under this section will take place when theft is committed and injuries are caused. The offence is cognizable, non-bailable, non-compoundable and triable by Magistrate of first class.

***Sikander Kumar vs. State,* (1998) (3) Crimes 69 Delhi HC:** In this case, the two accused threatened the complainant, a auto driver and robbed money from his pocket and drove away the auto. The Trial Court convicted the accused. On appeal, the Delhi High Court set aside the conviction on the ground that the prosecution failed to prove the guilt.

Attempt to commit robbery (Section 393): "Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Voluntarily causing hurt in committing robbery (Section 394): "If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with (imprisonment for life), or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Limbaji v. State of Maharashtra [AIR 2002 SC 491]: In this case, injuries were caused to the deceased in the process of removing earrings. The Court observed that the booty was distributed among three accused and they had secreted the robbed articles. These things revealed the common intention to commit robbery. One of them picked up a stone piece and caused death of the victim. There was nothing to show that the accused even knew of any such possibility. Others could not be convicted of murder and robbery with the help of presumption under Section 114 Evidence Act. They were liable to be convicted only under Section 394, IPC.

Sati Prasad v. State of Uttar Pradesh [AIR 1973 SC 448]: In this case, while searching the drowned bodies in river, a wrist watch, a gold ring and some money had been recovered from the body by certain boatman. However, the accused, who was the head-constable, had taken away the wrist watch, gold ring and the money from the boatman after beating and threatening him. The accused had further directed the boatman not to disclose this fact to anybody and to throw the dead body into the river. An advocate, who accompanied the search party, told the concerned police constables that he would take up the matter with higher authorities for action. At that stage, the accused went to his house, brought the wrist watch and the gold ring and confessed what had happened before the party and said that he had spent the cash. The accused was convicted *inter alia*, under Section 394, IPC since the articles were taken from the boatman after voluntarily causing hurt to him.

The offence under Section 394 is cognizable and warrant should, ordinarily, issued in the first instance. It is both non-bailable and non-compoundable and is triable by a Magistrate of the first class.

4. DACOITY

(Sections 391, 395-400 and 402)

Dacoity is an aggravated form of robbery in which there are five or more. Hence, it is also known as "Gang Robbery". When five or more persons conjointly commit or attempt to commit robbery, every one of them is said to commit 'dacoity' (Section 391). Dacoity involves robbery, which in its turn, includes 'theft and extortion'. Dacoity is considered as the most heinous crime all over the world.

According to Section 391 of the Indian Penal Code, 'when five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly commit or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing or attempting or aiding is said to commit 'dacoity'.

Ingredients: To constitute the offence of decoity under section 391

i. The accused commit or attempt to commit robbery;

ii. Persons committing or attempting to commit robbery and persons present and aiding must not be less than five;

iii. All such persons should act conjointly.

Difference between Robbery and Dacoity:

(1) Every case of dacoity is primarily a case of robbery but *vice-versa* is not correct.

(2) In dacoity the number of participants must be five or more; in robbery the number of participants is always less than five because robbery committed by five or more persons is dacoity.

Punishment for Dacoity (Section 395): "Whoever commits decoity shall be punished with imprisonment for life or with rigorous imprisonment for 10 years and shall also be liable to fine."

***Re Muppanna Appanna* [AIR 1948 Mad 96]:** In this case, a group of persons come to a house and beat up the family who were sleeping outside. One accused broke open the door. Three

of the accused went inside and the other two kept guard outside. All the accused helped to remove the boxes. Later two of the accused carried away the boxes. It was held that the beating and the robbery were all part of the same transaction and that all the accused acted conjointly. They were all held to be guilty of committing dacoity under Section 391 and 395 IPC.

Om Prakash v. State of Rajasthan **[AIR 1998 SC 1220]**: In this case, the Supreme Court ruled that where the charge of dacoity is against five named persons and out of them two were acquitted, the remaining three cannot be convicted for dacoity.

Saktu v. State of Uttar Pradesh **[AIR 1973 SC 760]**: In this case, it was alleged that apart from the named seven or eight persons, five or six committed dacoity. A large number of persons were acquitted because their identity could not be established. However, there was evidence that there were more than five persons who committed robbery in the house. So, the conviction under Section 391 and 395 was sustained.

Aggravated Form of Decoity or Dacoity with Murder (Section 396): Section 396 imposes constructive joint liability on all the persons for causing murder while conjointly committing decoity. Even one among them commits murder, all of them or equally liable for murder. Section 396 runs as follows—

"If any one or more of the five or more, while committing or attempting to commit dacoity, commits murder of any person, every one of them shall be punished with death or imprisonment for life or rigorous imprisonment for 10 years and shall also be liable to fine."

Ingredients: To punish under this section, the following conditions must be complied with—

(1) Dacoity was committed;

(2) Five or more persons conjointly committed dacoity;

(3) One or more of them committed murder;

(4) The murder was committed during the commission of dacoity.

Relevant Case Law:

***Kalika Tiwari vs. State of Bihar,* 1997 SC 445 SCC:** The accused in the instant case, formed into a gang of dacoity. One of them killed the High Court confirmed the conviction of the person, who murdered his inmate and acquitted the other members. On appeal, the Supreme Court set aside the decision of the High Court and confirmed/upheld the conviction of all the members by the Trial Court (under Section 396 read with Sections 302, 32 and 149 I.P.C.).

***Om Prakash and others v. State of UP* [1983 CrLJ 837 (SC)]:** In this case, the accused, who has enmity with the deceased, committed dacoity in the house of the deceased along with his companions on a moonlit night. At that time lantern was burning in the house of deceased. During dacoity the deceased was killed, his wife and brother-in-law were seriously injured. The dacoity looted ornaments, cash, clothes also from the house. They also injured a villager. The wife and brother-in-law of the deceased identified the dacoits in the light of lantern and moon. The accused were held guilty of dacoity as an act of dacoity and murder was proved beyond reasonable doubt.

The offence under Section 396 is cognizable, and warrant should, ordinarily, issue in the first instance. It is both non-bailable and non-compoundable, and is exclusively triable by the Court of Session.

Robbery, or dacoity, with attempt to cause death or grievous hurt (Section 397): "If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

Ingredients:

(1) Robbery or dacoity were committed;

(2) The accused used deadly weapons or caused grievous hurt or attempted to cause death;

(3) During the commission of robbery or dacoity, such weapons was used.

Om Prakash v. The StateI **[1978 CrLJ 797 All]**: In this case, it has been observed that when in a highway robbery a knife of unusual proportion was used and the passengers were looted, a deterrent punishment would be called for and it would be the duty of the trial judge to frame a charge under Section 397 and not under Section 392, IPC.

Phool Kumar v. Delhi Administration **[AIR 1975 SC 905]**: In this case, it was held by the Supreme Court that if the accused carried knife open to the view of the victims, it is sufficient use of a deadly weapon to terrorize them within the meaning of Section 397 and no other overt act as brandishing of the knife is necessary to apply Section 397.

Attempt to commit robbery or dacoity when armed with deadly weapon (Sec.398): "If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years."

Section 398 applies to cases of attempt to commit robbery or dacoity. It has no application to cases in which the robbery has actually been committed. A person may be said to be armed with a weapon when he has a weapon with him and carries it with the intention of using it should the occasion require so. In order to attract this section, it is not necessary that the accused must make a show of using the weapon. It is sufficient if he carries a dangerous weapon in such a manner that person feels that it can be used at any moment against him.

According to Section 397, whoever at the time of committing robbery or dacoity attempts to cause death or grievous hurt to any person shall be punished with imprisonment of not less than seven years. According to Section 398, attempt to commit robbery or dacoity with deadly weapon is punishable with not less than seven years imprisonment. Section 399 prescribes punishment for making preparation for committing dacoity as rigorous imprisonment for 10 years and shall also be liable to fine. According to Section

400, any person belonging to a gang of dacoits shall be punishable with imprisonment for life or rigorous imprisonment for 10 years and shall also be liable to fine.

Distinction between Theft, Extortion, Robbery and Dacoity

Theft (Sec. 378)	Extortion (Sec. 383)	Robbery (Sec. 390)	Dacoity (Sec. 391)
1. Taking away movable property without owner's consent is theft.	1. In extortion, consent is obtained by coercion.	1. Robbery is an aggravated form of theft or extortion takes away the property without consent	1. In docoity. there is no consent or it is obtained.
2. The subject matter is movable property	2. It may be movable or Immovable property	2. It may be immovable property if it is in the for form of extortion, and not otherwise.	2. It may be immovable property if it is in the form of extortion, and not otherwise.
3. In theft, there is force or compulsion	3. Force may or may not be used.	3. Force may or may not be used.	3. Force may or may not be used.
4. It can be committed by one person	4. It can be committed by one person	4. It can be committed by one person	4. To commit the offence of dacoity, there must be atleast five persons or more.
5. Fear does not exist in theft.	5. Fear exist if the robbery is a form of extortion	5. Fear exists if the robbery is a form of extortion.	5. Fear exists in dacoity.

5. CRIMINAL MISAPPROPRIATION/DISHONEST MISAPPROPRIATION OF PROPERTY

(Secs.403 and 404)

Misappropriation means to take possession of property and putting it to unauthorised or wrongful use. It especially applies to instances of putting somebody else's property to one's own use. The term 'misappropriation' indicates the act of wrongful conversion of or dealing with anything by the person to whom it has been entrusted.

When a person takes possession of a property of another under an honest belief/good faith that it belongs to himself and later he discovers/comes to know that it does not belong to himself and keeps the same with him without returning to the real owner, it is called criminal or dishonest misappropriation of property. Sections 403 and 404 deals with the dishonest misappropriation of property, which read as follows—

Dishonest Misappropriation of Property (Section 403): "Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both."

Illustrations:

(a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft, but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being joint owners of a house, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Ingredients: To constitute dishonest/criminal misappropriation, the following ingredients are to be satisfied:

i) dishonest misappropriation or conversion of property to one's own use; and

ii) such property must be movable.

Dishonest misappropriation of property possessed by deceased person at the time of his death (Section 404): It runs as follows—

"Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years."

6. Criminal Breach of Trust (Sections 405-409): Whoever dishonestly misappropriates trust property is said to have committed the offence of 'Criminal Breach of Trust'. The offence of criminal breach of trust is committed by a person, who is entrusted with property or dominion over property and he dishonestly misappropriates or converts the same for his own use.

Section 405 I.P.C. defines criminal breach of trust, which runs as follows:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts that property to his own use, or dishonestly uses or disposes off that property in violation of any direction of law

prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustration: Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Ingredients: To attract this section the following ingredients must exist—

(1) The property must be movable property;

(2) Such property was in possession of the deceased at the time of his death;

(3) The accused misappropriated it or converted it to his own use;

(4) The accused did so dishonestly.

The offence is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class.

Ingredients: To constitute the offence of criminal breach of trust, the following ingredients are to be satisfied:

1. The accused must be entrusted with property or with dominion over it;
2. The person so entrusted must use that property; or
3. He must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation –
   a) Of any direction of law prescribing the mode in which such trust, is to be discharged; or
   b) Of any legal contract made touching the discharge of such trust.

Punishment (Section 406): Section 406 prescribes punishment for criminal breach of trust. It runs as follows—

"Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Criminal breach of trust is punishable with imprisonment of either description which may extend to three years or with fine or with both.

Distinction between Criminal Misappropriation and Criminal Breach of Trust

Criminal Misappropriation (Section 403)	Criminal Breach of Trust (Section 405)
1. It is a misappropriation of property which goes to another's possession directly.	1. The property is given on trust by the owner. Later, it is dishonestly misappropriated.
2. The subject matter is movable property only.	2. The subject matter may be movable or immovable property.
3. The property comes into the possession of the offender by some causality or otherwise and he after-words misappropriates it.	3. The offender is lawfully entrusted with the property and he dishonestly misappropriates the same.

7. RECEIVING OF STOLEN PROPERTY

(Sections 410-414)

Section 410 defines stolen property. This section provides punishment for dishonest receipt and retention of stolen property. Mere possession of stolen property is not an offence, it must be received and retained dishonestly and with the knowledge that it is stolen property. The person who receives or retains stolen property is punished in the same manner as a person who commits theft.

Section 410 deals with stolen property. It runs as follows—

"Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been

criminally misappropriated or in respect of which *[The words "the" and "offence of" rep. by Act 12 of 1891, sec.2 and Sch.1 and Act 8 of 1882, sec. 9, respectively.] criminal breach of trust has been committed, is designated as "stolen property," **[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without ***[India] [Ins. By Act 8 of 1882, sec.9.] [The word "British India" have successively been subs. By the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec.3 and Sch. (w.e.f. 1.4.1951), to read as above]] But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Thus, according to this section a property will be termed as stolen property the possession of which has been transferred by any of the following ways—

1) Theft;

2) Extortion;

3) Robbery;

4) Criminal misappropriation; or

5) Criminal breach of trust.

R.V. Villensy **[(1892) 2 QB 597]**: In this case, a parcel was handed to the prosecutors, a firm of carriers, for conveyance to the consignees. While in the prosecutor's depot, a servant of the prosecutor' removed the parcel to a different part of the premises and placed upon it a label addressed to the accused. The superintendent of the prosecutor's business, on receipt of information as to this, and after inspection of the parcel, directed it to be sent to the addressee in a van, along with two detectives. The parcel was duly received by the accused under the belief that it was stolen. It was still held by the court that the property having come under the possession of the actual owners before its receipt by the accused. It had ceased to be stolen property and the accused could not be convicted of receiving it knowing it to have been stolen.

Kishan Lal v. State of Uttar Pradesh **[(1997) CrLJ 309 (All)]**: In this case, four thieves stole goods from the custody

of a railway company and sent them by a parcel in the same company's line addressed to the accused. During the transit, the theft was discovered, and on the arrival of the parcel at the station for delivery, a policeman in the service of the company opened it, and then returned it to the porter, who was under the duty to deliver it, under instructions to keep it till further order. On the following day, the policeman ordered the porter to take it to address, where it was received by the accused. The police thereafter got hold of him. The court held that the goods had reached its lawful owner, the railway company, so that it could no longer be called stolen goods and thus, the receipt of it could in no way be receipt of stolen property.

Dishonestly Receiving Stolen Property (Section 411): Section 411 prescribes punishment for dishonestly receiving stolen property. It runs as follows—

"Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Relevant Case Law:

Re Gaune Vithu Ghode **[(1942) Cri. Appeal No. 187 of 1942 Unrep (Bom)]:** In this case, it was observed that if a gold necklace is stolen and exchanged for another necklace or melted down and converted into an ingot, it does not cease to be the same golden necklace that was stolen. What was stolen was gold in the form of a necklace, and what is produced is the same necklace in the form of an ingot.

Section 412 to 414 deal with aggravated forms of receiving stolen property and their respective punishment.

Dishonestly receiving property stolen in the commission of a dacoity (Section 412): "Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been

stolen, shall be punished with *[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

*Subs. By Act 26 of 1955, Sec.117 and Sch. for "transportation for life" (w.e.f. 1.1.1956).

Habitually dealing in stolen property (Section 413): "Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with *[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

*Subs. By Act 26 of 1955, Sec. 117 and Sch. for "transportation for life" (w.e.f. 1.1.1956).

Assisting in concealment of stolen property (Section 414): "Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

CHEATING

(Sections 415-420)

Sections 415 to 420 of the Indian Penal Code, 1860 deal with the offence of Cheating.

Section 415 defines Cheating. Section 416 deals with cheating by *personation.* Section 417 provides punishment for cheating. Section 418 speaks about cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Section 419 prescribes punishment for cheating by *personation* and Section 420 deals with cheating and dishonestly inducing delivery of property.

Cheating at common law was a misdemeanor and punishable with imprisonment and fine. Hawkins defines cheating as, "deceitful practices, in defrauding or endeavouring to defraud another of his own right by means of some artful device, contrary to the plain rule of common honesty."

Cheating (Section 415): This section defines cheating. It runs as follows—

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

Explanation: A dishonest concealment of facts is a deception within the meaning of this section.

The term deception means "making a person to believe something which is false."

Illustrations:

a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not means to pay. A cheats.

b) A, by exhibiting to Z a false sample of an article, intentionally deceived Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

Section 415 deals with three types of cheating as stated below—

i) By fraudulently deceiving and inducing the person so deceived (a) to deliver any property, or (b) to consent to the retention of any property by any person;

ii) By dishonestly inducing the person to deliver any property or to give consent to the retention of any property; and

iii) By intentionally inducing the person deceived to do or to omit to do anything which he would not have done, if he was not so deceived and such act of him caused or was likely to cause damage, or harm in body, mind, reputation or property.

Ingredients: Following are the essential ingredients of the offence of cheating:

1. The accused must deceive the complainant fraudulently or dishonestly or intentionally.
2. The complainant must have been induced, to
   a) Deliver any property or allow any person to retain any property; or
   b) Do or omit to do anything which he ought not have done, if he was not so deceived.
3. The act or omission likely to cause any harm to the complainant in body, mind, reputation or property.

Explanation to the Section says that a dishonest concealment of facts is a deception within the meaning of this Section.

Cheating by personation (Section 416): A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation: The offence is committed whether the individual personated is a real or imaginary person.

Illustrations:

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Section 417 prescribes punishment for cheating which may extend to imprisonment for a period of one year, or fine, or both. Section 417 runs as follows—

Punishment for Cheating (Section 417): "Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

***Abhayanand Mishra vs. State of Bihar,* AIR 1961 SC 1968:** In this case, the accused submitted forged certificates to the Patna

University to appear for M.A. Examination. Later, the certificates were found to be forged and the University cancelled the permission and he was prosecuted for cheating.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect (Section 418): "Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Punishment for Cheating by personation (Section 419): "Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Cheating and dishonestly inducing delivery of property (Section 420): "Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

9. FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY

(Sections 421-424)

Sections 421 to 424 of the Indian Penal Code, 1860 deal with "Fraudulent Deeds and Disposition of Property."

A fraudulent or dishonest intention is common to all offences relating to such deeds or disposition of property. The offences are as follows and they are all punishable with imprisonment of either description up to 2 years or fine or both.

i) Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors (Section 421).

ii) Dishonestly or fraudulently preventing debt due or payable to the offender or to any other person so that the amount of the debt so due may not be available to creditors (Section 422).

iii) Dishonest or fraudulent execution of deed of transfer containing false statement or consideration (Section 423).

iv) Dishonest or fraudulent removal or concealment of property (Section 424).

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors (Section 421): This section deals with insolvency frauds whereby dishonest disposition of property to cause wrongful loss to creditors is committed. It covers movable and immovable property including 'Benami' transactions. It runs as follows—

"Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfer or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Dishonestly or fraudulently preventing debt being available for creditors (Section 422): Section 422 deals with dishonest and fraudulent evasion of one's liability by masking property to defraud creditors is the essence of this section. It runs as follows—

"Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration (Section 423): This section deals with dishonest and fictitious conveyances and trusts including dishonest Benami transactions. It reads as follows—

"Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Dishonest or fraudulent removal or concealment of property (Section 424): It provides for fraudulent concealment or removal of property from a place where it is deposited. It runs as follows—

"Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. MISCHIEF

(Sections 425-440)

Sections 425 to 440 of the Penal Code, lay down the provisions relating to the offence of 'Mischief'. Section 425 defines Mischief. Section 426 provides punishment for mischief. Sections 427 to 440 deal with different forms of mischief.

Mischief (Section 425): "Whoever, with intent to cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects injuriously, commits 'mischief'."

Explanation 1: It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to the person or not.

Explanation 2: Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations:

a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

f) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

h) A causes cattle to enter upon the field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Punishment for Mischief (Section 426): "Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Gopi Naik v. Somnath **[1977 CrLJ 1665 (Goa)]**: In this case, the accused had cut the water pipe connection of the complainant. The court held that the accused was guilty of the offence of mischief, as he had diminished the value of the property, i.e., water supply.

Arjuna v. State **[AIR 1969 Ori 200]**: In this case, the accused damaged the standing crops grown by the complainant on the land belonging to the Government. The court convicted for the offence of mischief by sending his cattle to graze on the land of government which is cultivated by the complainant.

The offence of mischief under Section 426 is non-cognizable and summons should, ordinarily, issue in the first instance. It is bailable but is compoundable when loss of damage caused is loss or damage to private person only. It is triable by any Magistrate summarily.

Aggravated forms of mischief (Sections 427 to 440): Aggravated forms of mischief are essentially based on: (i) the value of damage caused; (ii) the nature of property damaged; (iii) the method adopted to cause damage; and (iv) other criminal motives influencing the act. These aggravated forms are briefly discussed here below.

There are seven aggravated forms of mischief as stated below:

1. Mischief causing damage to the amount of fifty rupees (Section 427).
2. Mischief in regard to animals (Sections 428 and 429).
3. Mischief in regard to water supply and public works (Sections 430-434).
4. Mischief by fire (Sections 435 and 436).
5. Mischief in regard to decked vessels (Sections 437 and 438).
6. Mischief in regard to any vessel with intent to steal (Section 439); and
7. Mischief with preparation for causing death, hurt or wrongful restraint or fear, of such death, hurt or wrongful restraint (Section 440).

11. CRIMINAL TRESPASS

(Sections 441-462)

The law relating to the offence of Criminal Trespass is laid down in Sections 441 to 462 of the Indian Penal Code, 1860. Section 441 defines criminal trespass. Section 442 defines house-trespass. Section 443 deals with lurking house-trespass. Section 444 prescribes lurking house-trespass by night. Section 445 deals with house-breaking. Section 446 provides for house-breaking by night. Section 447 deals with punishment for criminal trespass. Section 448 deals with punishment for house-trespass. Section 449 provides for house-trespass in order to commit offence punishable with death. Section 450 deals with house-trespass in order to commit offence punishable with imprisonment for life. Section 451 defines house-trespass in order to commit offence punishable with imprisonment. Section 452 deals with house-trespass after preparation for hurt, assault or wrongful restraint. Section 453 provides for punishment for lurking house-trespass or house-breaking. Section 454 deals with lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment. Section 455 defines lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint. Section 456 deals with punishment for lurking house-trespass or house-breaking by night. Section 457 defines lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment. Section 458 deals with lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint. Section 459 provides for Grievous hurt caused whilst committing lurking house-trespass or house-breaking. Section 460 deals with all persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them. Section 461 defines dishonestly breaking open receptacle containing property. Section 462 deals with punishment for same offence when committed by person entrusted with custody.

Trespass into the property of another is a civil wrong. When it is committed with an intention to commit an offence it will become a crime. Criminal trespass is defined under Section 441. To constitute the offence of criminal trespass there should be

unauthorised entry. If the entry is lawful; the offender should remain there unlawfully with an intention to commit an offence.

According to Section 441, any person who enters upon the property of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, commits an offence of "criminal trespass". If such person enters upon the property of another lawfully but unlawfully remains there with intent to insult or annoy such person, he is guilty of an offence under this section. It runs as follows—

Criminal trespass (Section 441): "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass."

Ingredients: To constitute the offence of Criminal Trespass, the following essential elements are to be satisfied:

1. Entering into another's property.
2. Entry may be lawful or unlawful.
3. If entry is lawful, unlawfully remaining there with an intention to commit an offence.
4. Lawful or unlawful entry in order to intimidate, insult or annoy any person.

The property into which the criminal trespass is committed should be in the possession of another person. It is not necessary that the complainant should be present at the time of entry by the accused. But the intention of the accused should be to commit an offence, or to offence, insult or annoy another person.

Punishment for criminal trespass (Section 447): "Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

Harish Chandra v. State [AIR 1955 Cal 1338]: In this case, the workers of a factory left their work place. They entered into the office of the Managing Director with deadly weapons. They raised slogans and beat the staff. It was held that the accused workers were guilty of the offence of criminal trespass.

Olga Tellis vs. Bombay Municipal Corporation, (AIR 1985 SC 545): In this case, unauthorised entry into the Government land was held as not criminal trespass, because their intention was to find out habitat in the pavements or slums. It is done due to poverty and out of sheer helplessness. The Court held that they were not having the intention to intimidate, insult or annoy any person and hence was not convicted.

Aggravated forms of criminal trespass: Sections 442 and 448 to 452 of the Indian Penal Code, 1860 deal with aggravated forms of criminal trespass.

House trespass (Section 442): Section 442 deals with house trespass. It reads as follows—

"Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation: The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.

Criminal trespass if it is committed in any building tent or vessel used as a human dwelling or any building used as a place for worship or as a place for the custody of property, the offence of house trespass is committed. It is an aggravated form of criminal trespass, and depends upon the place where the offence is committed. The explanation to the section provides that the introduction of any part of the criminal trespasser's body entering is sufficient to constitute house trespass.

Punishment for house-trespass (Section 448): "Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Lurking House Trespass (Section 443): Section 443 deals with further aggravation of criminal trespass due to its lurking character. It runs as follows—

"Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

This is an aggravated form of house trespass. If the offender after taking sufficient precautions not to be seen by any one who is having a right to prevent him, commits house trespass, that house trespass is known as Lurking House Trespass. This offence is considered as a more serious one, if it is committed during night. Punishment is provided under Section 453.

Punishment for lurking house-trespass or house-breaking (Section 453): "Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."

House Breaking (Section 445): House trespass if it is committed in any one of the means specified under Section 445, is known as house breaking.

1. If the trespasser enters or quits through a passage made by himself or by any abettor of the house trespass in order to commit house trespass.
2. If he enters or quits through any passage which is generally not used for human entrance or through any passage to which he has obtained access by scaling or climbing over any wall door building.
3. If he enters or quits through any passage which he or any abettor of the house trespass has opened, in order to commit house trespass by which that passage was not intended by the occupier of the house to be opened.
4. If he enters or quits by opening any lock in order to commit house trespass or in order to quit the house after house trespass.

5. If he effects his entrance or departure by using criminal force or committing assault or by threatening any person with assault.

6. If he enters or quits by any passage which he knows to have been fastened against such entrance or departure and to have unfastened himself or by any abettor of the house trespass.

Explanation to the Section provides that any out-house or building occupied with a house and between which there is an immediate internal communication, is part of the house within the meaning of this Section. Sections 446 to 462 deal with aggravated forms of criminal trespass house trespass and house breaking and their respective punishments.

LECTURE-XIV

OFFENCES RELATING TO MARRIAGE

(Sections 493-498)

Sections 493 to 498 of the Indian Penal Code deal with the offences relating to Marriage as follows:

1. Mock Marriage (Sections 493 and 496).
2. Bigamy (Sections 494-496).
3. Adultery (Section 497; and
4. Seduction or Criminal Elopement (Section 498).

1. MOCK MARRIAGE

(Sections 493 & 496)

Mock marriage means invalid marriage. It is a cohabitation or sexual intercourse by a man, married or unmarried with a woman of any age, whom he induces to be his wife, but in fact his concubine. The form of the marriage ceremony depends on the race or religion to which the parties to the marriage belong. If the parties to the marriage do not belong to the same race or religion, then they can change their religion.

According to Section 493, combination caused by a man deceitfully inducing a belief of lawful marriage. It runs as follows—

"Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Ingredients: To constitute to the offence under section 493 the following conditions are to be satisfied:

i. The accused cohabited with the prosecutrix.

ii. He was not legally married to her.

iii. She has consented to the cohabitation believing that she had been lawfully married to him.

iv. Such belief in her was induced by deceit on the part of the accused.

Marriage ceremony fraudulently gone through without lawful marriage (Section 496): This section seeks to punish fraudulent or mock marriages. It applies to those situations where a fake ceremony is gone through pretending it to be a valid marriage. It runs as follows—

"Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Ingredients: To constitute the offence under Section 496, the following conditions are to be satisfied—

i. The accused went through the form of marriage.

ii. He knew that he was not lawfully married.

iii. He went through the form of marriage dishonestly or fraudulently.

Kailash Singh v. State of Rajasthan **[1992 Cr.LJ 1005 Raj]:** In this case, the accused a married man induced a girl saying that he was unmarried. The parents of the girl also believed his words. They gave dowry and arranged marriage between the accused and their daughter. At the time of the marriage ceremony the parents came to know the fraudulent act of the accused. The deceived girl complained the matter to the police. The court convicted the accused under Section 496.

Prasanna Kumar v. Dhanalaxmi **[1989 Cr LJ 1829 (Mad)]:** In this case, the accused married for the second time during the pendency of special appeal against decree of divorce in violation of Section 15 of the Hindu Marriage Act but without concealing the fact of pendency of the appeal from the girl or her parents, it was held that no conviction could be entered under Section 496 IPC as the act of the accused was neither dishonest nor fraudulent.

2. BIGAMY

(Sections 494-496)

Meaning: Bigamy means "marrying again during the life time of the lawfully wedded spouse. In other words, bigamy means having two spouses living. Spouse means wife or husband. If a man or woman, having spouse living, marries again, is guilty of the offence of bigamy. (If a man has two wives or a woman has two husbands, it is bigamy. If a man has more than two wives, it amounts to 'polygamy'. If a woman has more than two husbands, it is called 'polyandry'.)

According to Section 494 of the Indian Penal Code, "marrying again during the life of husband or wife" is an offence. It runs as follows—

"whoever, having a husband or wife living, marries in case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Exceptions: This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real State of facts so far as the same are within his or her knowledge.

Exceptions: Section 494 provides the following two exceptions in which the second marriage (bigamy) is not an offence.

1. When the first marriage is declared void or dissolved by the Court of competent jurisdiction.

2. If the whereabouts of the other spouse are not known for a continuous period of seven years.

Applicability: Section 494 I.P.C. is applicable to Hindus, Christians, Parsis, Jews and Mohamedan women. It is not applicable to Mohamedan male, who can have four wives at a time legally. If he (muslim male) marries again during the life time of four wives, he is guilty of the offence of bigamy under Section 494 I.P.C.

Ingredients: To constitute bigamy, the following ingredients are to be satisfied:

1. That the accused has already been married to some persons.
2. That the accused married another person.
3. That the second marriage was void by the reason of its taking place during the life of the first spouse.

Relevant Case Law:

***B.S. Lokhanda vs. State of Maharashtra,* (AIR 1965 SC 1564):** The Supreme Court in the instant case, held the accused not guilty of bigamy and acquitted, on the ground that the second marriage was not valid on the ground that it was not solemnized in accordance with the legal or religious formalities.

***Santosh Kumari v. Surjit Singh* [1990 CrLJ 1012 HP]:** In this case, the first wife gave permission to her husband for his second marriage. Both the wife and husband applied for the permission before the District Court, which was accorded by that Court. The proposed second bride came to know it and filed an appeal before the High Court. The court held that no court is authorised to permit second marriage even if it be at the application of the first wife. Such permission has been held illegal.

Lingari Obulamma v. State* [AIR 1979 SC 848]:** In this case, it has been observed that there was absolutely no evidence to prove that any of the two essential ceremonies of Hindu Marriage i.e., *Datta Homa* and *Saptapadi* had been performed at the time of the second marriage and the existence of the custom in the community to put the yaru 'Thread' instead of ***'Mangal Sutra'

was neither mentioned in the complaint nor proved in the evidence, the conviction under Section 494, IPC could not be sustained. It was accordingly held that it was well settled that before a conviction can be recorded under Section 494, it must be proved that both the marriages were valid and strictly according to law governing the parties.

Durga Charan v. State of Delhi **[2000 CrLJ 3530 (Delhi)]:** In this case, the accused belonged to a Scheduled Tribe community. There was no notification by the Central Government making the Hindu Marriage Act applicable to that Tribe. Hence, Section 494 was not attracted to his marriage.

Punishment for Bigamy (Sections 494 and 495): The person guilty of the offence of bigamy shall be punished with imprisonment, which may extend to seven years and shall also be liable to fine. Section 494 prescribes punishment upto ten years and also fine for concealment of the former marriage from person with whom subsequent marriage is contracted.

3. ADULTERY

(Section 497)

Meaning and Definition: Adultery means "sexual intercourse by a man with a married woman, who is not his wife, with her consent and without the consent or connivance of her husband, not amounting to rape." Section 497 runs as follows—

"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

Essential Elements: To constitute adultery, the following ingredients are to be satisfied:

1. The accused has sexual intercourse with a woman.

2. The woman is married, and the accused had knowledge of the same.
3. The sexual intercourse took place without the consent or connivance of her husband; and
4. The sexual intercourse did not amount to rape.

For the offence of adultery, man alone is punished, though woman is involved. The complaint should be filed by her husband, who is the aggrieved party.

Punishment for Adultery (Section 497): In adultery, man alone is punishable with imprisonment for a term which may extend to five years or with fine or with both. The woman is not subject to punishment even as an abettor, though she is a consenting party.

Constitutional Validity of Section 497 I.P.C.: There is a difference of opinion as to the question that, Section 497, I.P.C., is violative of Article 14 of the Indian Constitution. Article 14 of the Indian Constitution guarantees equality before law and equal protection of Laws irrespective of sex, race, religion etc. Section 497 I.P.C. discriminates between man and woman. It confers right on the husband to institute criminal proceedings on the adulterer i.e., the third person who had sexual intercourse with his wife. But, such right is not available to a woman, whose husband had sexual intercourse with another married woman. For guilty of the offence of adultery, man alone is punished, not the woman, though she is equally involved in the offence. The Supreme Court resolved this question in: ***Vishnu vs. Union of India,*** **1985 SC 1618 –**

Section 497 of the Indian Penal Code is not violative of Article 14 of the Indian Constitution. Adultery is considered as an offence against the sanctity of the matrimonial home and hence, those men who defile the sanctity, are brought within the clutches of law for punishment.

Distinction between Bigamy and Adultery: Following are the notable points of difference between the offences of bigamy and adultery:

Bigamy (Section 494)	Adultery (Section 497)
1. Marrying again during the life time of the spouse (lawfully wedded wife/ husband) is an offence of bigamy.	1. Sexual intercourse by a man with a woman, who is the wife of another with her consent and without the consent or connivance of her husband, is an offence of adultery.
2. Any spouse, whether a husband or wife may be guilty of the offence of bigamy and is punishable.	2. Only a man, who is guilty of the offence of adultery is punishable and the woman is not punishable, though she is a consenting party.
3. It is more serious and the person guilty of the offence is punishable upto 7 years imprisonment or fine or both.	3. It is less serious, when compared to bigamy and is punishable with imprisonment for 5 years and fine.
4. The offence of bigamy is compoundable with the leave (permission) of the Court under Section 302 (2) of the Code of Criminal Procedure, 1973.	4. The offence of adultery is compoundable without the leave of the Court under Section 320 (1) of the Code of Criminal Procedure, 1973.

LECTURE-XV

CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

(Section 498A)

Chapter XXA containing Section 498A, inserted by the Criminal Law (Second Amendment) Act, 1983 (Act No.46 1983 w.e.f. 25.12.1983) deals with "husband or relatives of husband of a woman subjecting her to cruelty. It runs as follows—

"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

Explanation: For the purpose of this section, "cruelty" means—

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Object of Chapter XXA (Section 498A): The object of adding this chapter is to punish a husband and his relatives who torture and harass the wife with a view to coerce her or any person related to her to meet any unlawful demands or to drive her to commit suicide.

To make the offence deterrent, section 498A prescribes a sentence of three years and also a fine for the husband or the relatives of the husband of a woman, who subject her to cruelty.

Cruelty: Meaning: 'Cruelty' includes both physical and mental torture. 'Wilful conduct' in *Explanation (a)* to section 498A, IPC can be inferred from direct and indirect evidence. The word cruelty in the *Explanation* clause attached to the section has been given a wider meaning to include—

(a) Any wilful conduct which is of such a nature as is likely to drive the women to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health of the woman, or

(b) Harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand.

Difference between Section 304B and 498A of the IPC: Section 304B deals with dowry death being subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. But, the terms has not been defined in Section 304B. The explanation to Section 498A give the meaning of cruelty and as given in explanation 'cruelty' by itself amounts to an offence and is permissible. Though it is true that cruelty is a common essential to Section 304B and Section 498A, the provisions deal with two distinct offences. Under Section 304B, it is the 'dowry death' that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498A and the husband or his relative would be liable for subjecting the woman to 'cruelty' any time after the marriage. Further, a person charged and acquitted under Section 304B can be convicted under Section 498A without charge being there, if such a case is made out. But from the point of view of practice and procedure and to avoid technical defects, it is necessary in such cases to frame charges under both the sections and if the case is established, they can be convicted under both

the sections but no separate sentence need be awarded under Section 498A in view of the substantive sentence being awarded for the major offence under Section 304B, IPC.

Section 498A of the IPC and Section 113A of the Evidence Act, 1972: Section 113A of the Evidence Act provides that "When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage that her husband or such relative of her husband and subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

The ingredients of Section 113A of the Evidence Act are:

i. The woman should be a married woman;

ii. She committed suicide within seven years of her marriage;

iii. The law presumes that her husband or his relatives abetted her to commit suicide;

iv. Her husband or his relatives subjected her to cruelty;

v. The term 'cruelty' in Section 113A shall have the same meaning as in Section 498A of the IPC.

Section 113A of the Evidence Act, and the Section 498A and 304B of the Indian Penal Code are interlinked.

In a criminal trial, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirements of proof cannot lie in the realm of surmise and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498A, IPC and Section 113A, Indian Evidence Act. Although, the Court's conscience must be satisfied

that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the case and the materials placed on record. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter.

Vishvanath Kalubhai Kristi v. State of Gujarat **[2002 CrLJ 3066 (Guj)]**: In this case, the deceased was a house wife and her husband was earning very meagre salary. There was evidence that deceased was constantly being nagged and harassed by her in-laws (accused persons) for not doing any work and to earn more money. It was held that such harassment amounted to cruelty and accused persons were guilty of the offence under Section 498A of IPC.

P.B. Bikshipathi v. State of AP **[1992 CrLJ 1186 (AP)]**: In this case, it has been held that drinking and late coming habits of the husband coupled with beating and demanding dowry amounts to cruelty within the meaning of Section 498A, IPC.

State of Karnataka v. Moorthy **[2002 CrLJ 1683 (Kant)]**: In this case, the husband disregarded his duty to provide his wife and infant child the elementary means of sustenance. He deliberately and irresponsibly squandered his earnings on gambling and other vices and thereby starved his wife and infant child to death. This was held to be amounting to cruelty under Section 498A.

Shankar Prasad v. State **[1991 CrLJ 639 (Cal)]**: In this case, the court has expressed the opinion that by virtue of clause (b) of the Explanation to Section 498A, mere demand of dowry would be an offence.

State of Karnataka v. K.S. Manjunath Chary [1999 CrLJ 3949 (Kant)]: In this case, the father-in-law and the husband of the deceased used to demand dowry, though their demand was met by the step-father of the deceased at the time of marriage. They also attacked her chastity, when there was no reasonable ground for it. Homicidal death of the wife took place within five months of the marriage. The court said that all this amounted to cruelty within the meaning of Section 498A.

The punishment for the offence under Section 498A is imprisonment for 3 years and fine. The offence under Section 498A is cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf. It is non-bailable and triable by the Magistrate of the first class.

LECTURE-XVI

DEFAMATION

(Sections 499-502)

Meaning and Definition: Sections 499 to 502 of the Indian Penal Code, 1860 deal with the offence of 'Defamation'. It is both a Tort as well as a Crime. In other words, the injured party can file a suit against the wrong-doer in Civil Court for damages and can also institute criminal proceedings to punish the wrong-doer.

'Defamation' means "injury to reputation or character of a person." It is a publication of a false statement by one person, causing injury to reputation or character of another person. It is an offence under Section 499 I.P.C.

E.g.: A is a good and honest man. B falsely publishes in news paper that A is a smuggler. Hence, B has defamed A or B is said to have committed the offence of defamation.

Section 499 runs as follows—

"Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person"

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of

that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations:

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch, A points to Z, intending to cause it to be believed that Z stolen B's watch. This is defamation unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of exceptions.

First Exception: Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception: Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception: Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration: It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public

support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public interested.

Fourth Exception: Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation: A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception: Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations:

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this is in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception: Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation: A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations:

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception: Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration: A judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception: Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration: If A in good faith accuse Z before a Magistrate; If A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception: Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations:

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception: Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

The term 'imputation' used in the above definition under Section 499 I.P.C. means, "accusation, which is made to injure the reputation of another." The imputation should be made with an intention or knowledge to defame. The word publication in the above definition, means "bringing/causing the defamatory matter to the notice of others i.e., other than the accused and the injured."

Explanations:

Section 499 has four Explanations as stated below:

Explanation 1 refers to defamation in respect of a deceased person. If the defamatory statement imputes anything to a deceased, if living or it defames the family members of the deceased, the action is maintainable.

Explanation 2 relates to a company or an association or collection of persons as such. A company or corporation can sue for defamation, if it affects its reputation or business.

Explanation 3 deals with innuendo. 'Innuendo' means "indirect reference i.e., saying something ironically." In other words, a statement by itself is no defamation. But, because of the existence of some latent and secondary meaning, it becomes defamatory.

E.g.: X, a lady has given birth to a child. This statement by itself is no wrong. If this statement is made falsely to X, with the knowledge that she is not married, it is a wrong and amounts to defamation.

Explanation 4 deals with fallen reputation. If a person has no reputation at all, he cannot be defamed.

Exceptions: Section 499, I.P.C., provides for ten Exceptions to the accused to get exemption from the Criminal Liability.

1. Imputation of truth for public good: If a person proves that the defamatory statement made by him is true and it is published for the public good, it is no offence.

2. Public conduct of public servant: If a public servant, in discharge of his duty, communicates to the higher authority, about the conduct of his subordinate, he is not subject to defamatory suit or proceedings.

3. Conduct of any person touching any public question: It is no defamation to express in good faith, any opinion respecting the conduct of any person or touching any public question.

4. Publication of report of proceedings of Court: It is no defamation and accused is not liable.

5. Expression of opinion as to the decision of a Court or conduct of a witness: If a person in good faith, in the interest of justice expresses his opinion on the decision of Court or conduct of a witness, it is no offence.

6. Merits of public performance: It is no defamation to express in good faith, opinion respecting the merits of any performance.

7. Censure passed in good faith by person having lawful authority: It is not defamation to pass in good faith any censure on the conduct of that another in matters to which such lawful authority relates.

8. Accusation preferred in good faith to authorised person: It is not defamation to prefer in good faith such accusation.

9. Imputation in protection of other's interest: It is no defamation, to make an imputation, if it is made in good faith in protection of other's interest or for the public good.

10. Conveyance of caution for public good: It is no defamation to convey a caution in good faith to one person against another, provided it is intended for the good of the person to whom it is conveyed or for the public good.

Punishment for Defamation (Sections 500-502): Section 500 provides punishment for defamation. It is simple imprisonment, which may extend to two years, or with fine or with both imprisonment and fine. Section 501 and 502 provide similar punishment for printing of defamatory matter and sale of printed substance containing defamatory matter respectively.

Jawaharlal Darda vs. M.G Kapasikar, **SC (1998) 4 SCC 112:** In this case, the accused published in his news paper that the complainant was involved in misappropriation of certain Government funds. The publication was made on the basis of the statement made by the Minister concerned. The accused contended that the publication (against the complainant) was true and was made for the public good. The Trial Court admitting the contention of the accused, quashed the complaint. On appeal, the Supreme Court upheld the decision of the Trial Court.

State of Maharashtra v. Anna Hazare (1998): In this case, the complainant lodged a complaint alleging that the accused committed offence under Sections 499, 500, 501 and 502 by maligning his reputation when Anna Hazare, a reputed social worker alleged that the complainant – Minister of Maharashtra state was involved in bribery. The Munsif Magistrate sentenced the accused to undergo two months imprisonment as there was no evidence of minister's involvement in bribery. There was an uproar in public throughout the country. Later the Maharashtra Government released Anna Hazare in the interest of public.

Radhanath Rath v. Birja Prasad Ray [1992 CrLJ 938]: In this case, the respondent published certain defamatory matter against the complainant and later the respondent published his 'apology' and 'regrets' for such publication in the next issue, and informed the complainant it was published without his knowledge, and he had no ill will against the complainant. The complainant filed the suit under Sections 500, 501 and 502. The Court opined that when the respondent expressed apology and regrets in his subsequent issue, as soon as it came to his notice, and expressed that it was published without his knowledge and without any ill-will towards the complainant, the respondent could not be held liable for the defamation under Sections 500, 501, 502, IPC.

Viswanath v. Shambunath [1995 CrLJ 277 All]: In this case, the complainant, a member of the community, filed defamation suit against the accused alleging that the accused published suit against the accused alleging that the accused published certain defamatory words against their caste. The Court dismissed the complaint holding that a complaint by a member of the community which was defamed in general, not maintainable. The complainant was not personally hurt and hence dismissed the case.

LECTURE-XVII

OFFENCES AGAINST THE STATE

(Waging War, Sedition etc.: Sections 121-130)

Sections 121 to 130 including Sections 121A and 124A of the Indian Penal Code, 1860 lay down the provisions relating to offences against the State. Sections 121 to 123 deal with "Waging War". Section 124 deals with "Assaulting President, Governor etc. with intent to compel or restrain the exercise of any lawful power." Section 124A deals with the offence of Sedition (Over-awing the Government).

Waging War (Sections 121-123): Waging war means taking part in an armed insurrection revolution or mutiny. Mere collection of arms and ammunition do not amount to waging war. A person, taking part in an organised armed attack on the constituted authorities for the subversion of Government and the establishment of another in its place would be guilty of the offence of waging war.

Waging, or attempting to wage war, or abetting waging of war, against the Government of India (Section 121): "Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life, and shall also be liable to fine."

Illustration:

A joins an insurrection against the Government of India. A has committed the offence defined in this section.

According to Section 121, "whoever wages war or attempts to wage war or abets the waging of such war shall be punished with death or imprisonment for life." This is the highest form of treason and hence is punishable with death penalty. For abetment and also for attempt, the same punishment given to the actual offender is provided. In other words, in the case of waging war there is no distinction between principal and accessory. Even if the abetted offence is not committed, the abettor will be given the same punishment which is given to the principal offender.

Ingredients: To constitute the offence under section 121 of the Indian Penal Code the following ingredients must exist—

(1) Accused must wage war, or

(2) attempt to wage such war, or

(3) abet the waging of such war,

(4) against the Government of India.

An offence under Section 121 is cognizable, non-bailable, non-compoundable, and exclusively triable by the Court of Session. It is an offence in which the Judge may issue warrant in the first instance.

Venu Nair v. Travancore – Cochin State **[AIR 1955 Tra-Co 33]**: In this case, it has been held: (i) that it was open to the members of the society to achieve the object of the end of capitalism and private ownership and establishment of a socialist State by all peaceful means, ceaselessly fighting public opinion that might be against them and opposing those who desired the continuance of the existing order of society and the present Government; (ii) that it would also be legitimate to presume that they desired a change in the existing Government so that they could carry out their programme and policy. But from these it did not follow that the society desired to bring about the change by force and violence; (iii) that the mere use of the words 'fight' and 'war' in their pledge, did not necessarily mean that the society planned to achieve its object by force and violence.

Mir Hasan Khan v. State **[AIR 1951 Pat. 50]**: In this case, it was observed that it would not be enough to show that the persons charged have connived to obtain possession of an armory and have when called upon to surrender it used the rifles and ammunition so obtained against the state troops. It must also be shown that the seizure of the armory was part and parcel of a planned operation and that their intention in resisting the troops of the State was to overhelm and defeat the troops and then to go on and crush any further opposition with which they might meet until either the leader of the movement succeed in obtaining possession of the machinery of Government or until those in possession of it yield to the demands of their leaders.

Conspiracy to wage war (Section 121A): Section 121A provides for conspiracy to commit offences punishable by Section 121. Section 121 A deals with conspiracy to wage war against

the Government of India. The Section was inserted by the 1870 Amendment Act. If two or more persons are conspiring to wage war against the Government of India, they are punishable under Section 121 A. It is immaterial, whether illegal act is the ultimate object of such an agreement or is merely incidental to that object.

Section 121A runs as follows—

"Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine."

Explanation: To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Collecting arms, etc. with intention of waging war against the Government of India (Section 122): Section 122 runs as follows—

"Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."

Concealing with intent to facilitate design to wage war (Section 123): This section reads as follows—

"Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

State (N.C.T. Delhi) v. Novjot Sandhu **[2005 Cri.L.J. 3950 (SC)]:** In this case, that the accused had knowledge of conspiracy and plans of terrorists to attack Parliament House. His illegal omission to apprise police or Magistrate of the design of conspirators

which is an act of waging war would make him liable for offence under Section 123 IPC. The fact that no charge was framed against him under Section 123 would not prejudice him because charge of waging war and other allied offences are subject matter of charges.

Assaulting President, Governor etc. (Section 124): Section 124 of the Code deals with "Assaulting President, Governor etc., with intent to compel or restrain the exercise of any lawful power. It runs as follows—

"Whoever, with the intention of inducing or compelling the President of India, or the Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of such President or Governor, assault or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Sedition (Section 124 A): Section 124A deals with the offence of sedition. It means overawing the Government. Sedition is an offence against the State. 'Sedition' means disturbing the tranquillity of the State by word, deed or writing and leading ignorant persons to subvert the Government. The expression "Sedition' is a comprehensive term. It covers all disloyalty, disconcert and disaffection towards the Government. Defaming the Government/ State also comes within the meaning of sedition. Section 124 A of the Penal Code confers wide power on the State to punish those who, by their conduct jeopardise the safety and stability of the State. Section 124A runs as follows—

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."

Explanation 1: The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2: Commits expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3: Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Section 124 A defines sedition and provides punishment for the same. According to this Section, whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with both.

Section 124 A has three Explanations. According to **Explanation 1**, the expression 'disaffection' includes disloyalty and all feelings of enmity. **Explanations 2** and **3** protect *bona fide* criticism of Government measures and administrative and other action of the Government. Thus, a journalist may canvass and censure the policy of the Government and its acts.

To invoke the jurisdiction of Section 124 A, the following points are to be considered:

i) Intention of the Speaker;

ii) The effect produced; and

iii) Whether his action caused disaffection or produced hatred or contempt of Government.

In English Law, sedition is nothing but defamation of the established Government.

Ingredients: To constitute an offence under Section 124 A, the following are the essential elements to be satisfied:

a) The accused must bring or attempt to bring into hatred or contempt or disaffection towards the Government;

b) By words or by signs or by visible representation or otherwise.

Constitutional Validity of Section 124A: There had been a controversy as to the question, whether Section 124A is violative of Article 19 (i)(a) of the Indian Constitution? Article 19 (i)(a) of the Indian Constitution confers on the Indian Citizens, the right of the freedom of speech and expression subject to reasonable restrictions under Clause (ii) of Article 19. The Supreme Court in:

Kedarnath Singh vs. State of Bihar, (AIR 1962, SC 955) held that Section 124 A, I.P.C. is not violative of Article 19 (i)(a) of the Constitution.

Defences: Following are the defences available to a person charged with the offence of sedition (Section 124 A) to get exemption from the Criminal Liability.

1. That he did not speak or write the words, or make the sign or representation, or did not do any other act in question; or
2. That he did not thereby bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection; or
3. That such disaffection was not towards the Government of India.

Queen Empress vs. Bal Gangadhar Tilak (22 Bom. 112): In this case, a well known Indian leader during freedom struggle was charged for the offence of sedition and was convicted by the Privy Council.

Re Amrita Bazar Press Ltd. (ILR 47 Cal. 1919): In this case, the security deposit of appellant press, Amrita Bazar Patrika Ltd., was forfeited by the Government of Bengal for publishing two articles, which excited the disaffection towards the Government.

LECTURE-XVIII

OFFENCES AGAINST THE PUBLIC TRANQUILLITY

(Sections 141-160)

The word "tranquillity" literally means "quality or state of being free from agitation or disturbance; being calm, quiet, peaceful." Where as the expression "Public Tranquility" means "the calmness or serenity concerning the people as a whole." Chapter VIII containing Sections 141 to 160 (including Sections 153A, 153AA, and 153B) of the Indian Penal Code, 1860 deal with the offences relating to the Public Tranquillity. This lecture covers the following heads:

1. Unlawful Assembly.
2. Riot or Rioting; and
3. Affray.

1. UNLAWFUL ASSEMBLY

(Sections 141 to 145, 149, 151, 157 and 158)

The term 'assembly' means gathering of a number of persons who have come together. Where persons assemble in such a way as to cause terror in the minds of the people, and endanger public peace and tranquillity, the assembly is termed as 'unlawful assembly.'

Section 141 of the Penal Code defines unlawful assembly, which runs as follows—

"An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is—

First: To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second: To resist the execution of any law or of any legal process; or

Third: To commit any mischief or criminal trespass or other offence; or

Fourth: By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth: By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation: An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Therefore, to constitute the offence under Section 141—

i) There must be an assembly of not less than five persons.

ii) They must have common object in committing the offence.

iii) The object must be in the nature as specified in items 1 to 5 namely:

1. Overawing the Government by using criminal force or show of criminal force.
2. Resisting the execution of law or legal process.
3. To commit any mischief, criminal trespass or other offence.
4. Forcible possession or dispossession of property; and
5. Illegal compulsion.

1. Overawing the Government: The overawing must be by criminal force or show of criminal force. What the section requires is that the assembly should have the common object to overawe, and not that it should have the effect of overawing. An intention to overawe shall not be presumed from the existence of a crowd. The overawing must be of the legislative or executive wings of the Central or State Government or any public servant in the exercise of his lawful power, i.e., the public servant must be acting in good faith under cover of his office.

2. Resisting the execution of law or legal process: Resistance means something more than disobedience or non-submission. It consists of an overt act showing an intention to make opposition to the execution of the law. Mere words, when there is no intention of carrying them into effect, will not be sufficient to prove an intention to resist.

3. To commit any mischief, criminal trespass or other offence; Offences, as per Section 40 means a thing punishable by the Code or under any Special or Local Law, with imprisonment for six months or upwards whether with a without fine. The legislature intended to include in the third clause of this Section, only mischief, criminal trespass and other offences.

4. Forcible possession and dispossession of property: This Clause prevents breach of peace by compelling everyone who desires to enforce a disputed right, to do so under the authority of law. The essence of the clause is the use, or show, of criminal force. It is perfectly immaterial whether the act, which one seeks to prevent by the use of criminal force is legal or illegal. Where both parties are entitled to joint possession, neither of them have the right under the law, to attempt to take forcible possession or take forcible possession after assembling a number of armed men and going to the place and thereby intimidating the people in possession. The term 'Or other rights' is not confined to a right of way or a right to the use of water. In the case of incorporeal rights such as right of way or right to use water, no one is in possession of it except during the actual moment when he is peacefully exercising it.

5. Illegal Compulsion: This clause makes it unlawful for any person to compel another person, by means of criminal force, or show of criminal force, to do what he is not legally bound to do or to omit to do what he is legally entitled to do. The mere use of criminal force or show of criminal force by any person to take possession of any property is not sufficient to bring the case within this clause unless some criminal intent is proved against the person so using force or show of force.

Being member of unlawful assembly (Section 142): According to Section 142, if a person remains in an unlawful

assembly after he became aware that the assembly was unlawful, he shall deemed to be a member of an unlawful assembly and shall be liable as such. It runs as follows—

"Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of unlawful assembly."

Punishment (Section 143): Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Joining unlawful assembly armed with deadly weapon (Section 144): The offence under Section 144 is an aggravated form and more serious punishment is prescribed for the offence. Section 144 reads as follows—

"Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse (Section 145): "Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Every member of unlawful assembly guilty of offence committed in prosecution of common object (Section 149): "If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse (Section 151): "Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Harbouring persons hired for an unlawful assembly (Section 157): "Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Being hired to take part in an unlawful assembly or riot (Section 158): "Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both, or to go armed—and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Relevant Case Law:

***Yunis v. State of Madhya Pradesh* [2003 Cr.LJ 817 (SC)]:** In this case, it was held that presence of accused as part of unlawful assembly is sufficient for conviction. The fact that accused was a member of unlawful assembly and his presence at place of occurrence has not been disputed is sufficient to hold him guilty even if no overt act is imputed to him.

***Ram Dular Rai v. State of Bihar* [2004 Cr.LJ 635 (SC)]:** In this case, it was held that mere presence in unlawful assembly cannot render a person liable unless he was actuated by common object and that object is one of those set out in Section 141 of

IPC. Common object is different from a 'common intention' as it does not require prior concert and prior meeting of minds before attack.

K.C. Mathew v. State [AIR 1956 SC 241]: In this case, people gathered at dead of night armed with crackers, choppers and sticks to rescue persons who were guarded by armed police. It was held that they must have known that murder will be committed and a conviction for murder-cum-rioting was justified.

2. RIOT OR RIOTING

(Sections 146-148)

Riot: Meaning and Definition: Riot is an unlawful assembly in a particular state of activity. An unlawful assembly in a state of violence becomes a riot. It is an aggravated form of being a member of an unlawful assembly. Section 146 defines rioting, which runs as follows—

"whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

Ingredients: To constitute rioting, the following ingredients are to be satisfied.

The offence of rioting involves (a) the use of force or violence; (b) by an unlawful assembly, or by any member thereof; (c) in prosecution of the common object of such assembly. It is to be noted that if number of persons lawfully assembled, suddenly quarrel with an intruder without any previous intention, they do not commit rioting. For proving rioting particular act of violence has to be established. But injury or damage need not be proved as riot is an offence against public tranquillity. Force has to be used against a human being and not against an inanimate object. The extent of force or violence used is of no importance. If it is used by all or one member of an unlawful assembly, it is sufficient for a conviction.

Relevant Case Law:

State of UP v. Dan Singh **[1997 Cr.LJ 1150 (SC)]:** In this case, it has been observed that there may be some inconsequential contradictions or exaggeration in the testimony of the eye-witnesses that should not be a ground to reject their evidence in its entirety in the case of rioting, where there are a large number of assailants and a number of witnesses, it is but natural that the testimony of the witnesses may not be identical. What has to be seen is whether the basic features of the occurrence have been similarly viewed and/or described by the witnesses in a manner which tallies with the outcome of the riot viz., the injuries sustained by the victims and the number of people who are attacked and killed.

Raghunath Rai v. R **[(1892) 15 All 22]:** In this case, where several Hindus, acting in concert, forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing 'wrongful gain' to themselves or 'wrongful loss' to the owner of the cattle but for the purpose of preventing the killing of the cows, it was held that they were guilty of rioting.

Punishment (Section 147): "Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

An offence under Section 147 is cognizable and warrant may be issued in the first instance. It is bailable but not compoundable. It is triable by any Magistrate but not summarily.

Rioting, armed with deadly weapon (Section 148): "Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

An aggravated form of rioting is made punishable by Section 148 of the Code, and therefore, an enhanced punishment is also provided for an offence under this section.

The offence under Section 148 is cognizable and warrant may be issued in the first instance. It is bailable but not compoundable, and triable by a Magistrate of the first class.

3. AFFRAY

(Sections 159 and 160)

The word 'affray' is derived from the French word '*affraier*', to terrify, and in a legal sense it takes for a public offence to the terror of the people.

According to Tomlin's Law Dictionary, "An affray is the fighting of two or more persons in a public place to the terror of her Majesty's subjects; and so called, because it makes men afraid.

According to Section 159 of the Indian Penal Code, 1860, "when two or more persons by fighting in a public place disturb the public peace, they are said to have committed the offence of affray."

Ingredients: To constitute the offence of affray, the following ingredients are to be satisfied:

i) Two or more persons should fight;

ii) In a public place;

iii) Disturbing the public peace.

The essence of the offence lies in the terror i.e., the disturbance which it causes to the public. It is not necessary to prove that a particular individual beats another individual. It is enough to prove that two or more persons fought together in a public place and thereby disturbed public peace. It is not necessary that weapons should be used in the fighting. The thing is that the fighting must be in a public place. The place where the public are actually in the habit of going must be deemed to be public place for the purpose of the offence.

E.g.: Railway platforms, theatre halls and open spaces resorted to by the public for purposes of recreation, amusement etc.

Punishment (Section 160): "Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both."

An offence under Section 160 is non-cognizable, but it may be cognizable if it amounts also to an offence under Section 34 of the Police Act. In either case, summons must be ordinarily issued in the first instance. It is bailable but not compoundable, and may be tried by any Magistrate, and is triable summarily.

Jagannath Sah v. R **[(1937) OWN 37]:** In this case, two brothers were quarrelling and abusing each other on a public road in a town and a large crowd gathered around them and the traffic was jammed but no actual fight took place. It was held that no affray was committed in the absence of actual fight.

According to H.S. Gour, a drunken brawl in the public street where two or more persons shout at and pull one another is not affray.

Babu Ram v. S **[(1930) 53 All 229]:** In this case, two persons attacked in a public place and overpowered another person, who merely defended himself. It was held that the two persons were guilty of affray, as there was a 'fighting' in a public place, notwithstanding the fact that the third person only defended himself in exercise of his right of private defence.

Distinction between Rioting and Affray

Rioting (Section 146)	Affray (Section 159)
1. It is committed by 5 or more persons.	1. It is committed by two or more persons.
2. It may be committed anywhere.	2. It can be committed only in the public places.
3. It requires common object.	3. Common object is not necessary.
4. It is a more serious offence when compared to Affray. The punishment is two years imprisonment or fine or both (Section 147).	4. It is less serious, when compared to the offence of Rioting. The punishment is imprisonment for one month or a fine of Rs.100/- or both (Section 160).

LECTURE-XIX

FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

(Sections 191-229A)

Chapter XI containing Sections 191 to 229A including Sections 195A, 216A, 216B, 225A, 225B and 228A of the Indian Penal Code, 1860 lays down the provisions relating to False Evidence and Offences against Public Justice. This lecture covers the following heads:

1. Giving False Evidence (Sections 191 and 193).
2. Fabricating False Evidence (Section 192).
3. False Certificates (Sections 197 and 198).
4. False Declarations (Section 199); and
5. Contempt of Court (Section 228).

1. Giving False Evidence (Section 191): Section 191 of the Code speaks about 'False Evidence'. It runs as follows—

"Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false; and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

Explanation 1: A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2: A false statement as to be belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations:

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears in a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore, gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

It is also known as 'Perjury'. Section 191 makes the giving of false evidence an offence. The word 'Evidence' is derived from the Latin term '*Evidentia*', which means "being clear". It is a testimony, oral or written/documentary or a real, which may be legally received to in order to prove or disprove some fact in dispute. A person is said to give false evidence, if he –

i) being legally bound by an oath or by an express provision of the law to state the truth, or to make a declaration, upon any subject;

ii) makes a false statement;

iii) which he either –

a) knows or believes to be false, or

b) does not believe to be true.

For the purpose Section 191, the statement may be oral/verbal or written.

Ingredients: To constitute the offence under Section 191, the following ingredients are to be satisfied:

1. The accused should be legally bound;
   (a) By an oath; or
   (b) By any law to state the truth; or
   (c) To make a declaration; and
2. The accused makes a false statement; and
3. The accused knows or believes the statement to be false.

Punishment (Section 193): Section 193 provides for punishment whoever intentionally gives false evidence with imprisonment upto seven years and shall also be liable to fine.

2. FABRICATING FALSE EVIDENCE
(Section 192)

Section 192 speaks about fabricating false evidence. It runs as follows—

"Whoever causes any circumstance to exist or makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement, intending that such circumstances, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations:

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Section 192 I.P.C. deals with Fabricating False Evidence. It means "Creating an evidence falsely". According to Section 192, fabricating false evidence consists in –

i) Causing any circumstance to exist or making any false entry in any book of record or making any document containing a false statement;

ii) Intending that such circumstance, false entry or false statement may appear in evidence –

a) in a judicial proceeding; or

b) in a proceeding taken by law before a public servant as such, or before an arbitrator;

iii) With the object of causing thereby any person who in such proceeding is to form an opinion upon the evidence to entertain an erroneous opinion; and

iv) Which touches on any point material to the result of such proceeding, whoever causes such circumstance to exist or makes such false entry etc., as indicated above – is said to fabricate false evidence (Section 192).

Ingredients: To constitute the offence under Section 192, the following ingredients are to be satisfied:

1. Causing any circumstance to exist, or making any false entry in any book or record, or making any document containing a false statement.

2. Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in

a proceeding taken by law before a public servant or an arbitrator.

3. Doing such act with the intention that it may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion touch any point material to the result of such proceeding.

Mohamod Javed vs. Govt. of NCT of Delhi, **1998 (2) Crimes 323 SC:** The accused in this case was charged and detained under the TADA and Arms Act. The Trial Court convicted him. On appeal, he was acquitted on the ground that the police falsely fabricated the evidence.

Distinction between Giving False Evidence and Fabricating False Evidence: Following are the notable points of distinction between the two:

Giving False Evidence (Sec. 191)	Fabricating False Evidence (Sec. 192)
1. It is committed by a person who is legally bound by an oath to state the truth.	1. It is committed by a person, who is not legally bound by an oath to state the truth.
2. The evidence given, need not be on a material point.	2. The evidence fabricated must be on a material point.
3. The evidence is given with an intention to deceive the person conducting the proceeding so as to make him believe it (the statement) to be true.	3. In fabricating false evidence, there is a particular intention in a proceeding to procure the formation of wrong opinion on a particular point.

3. FALSE CERTIFICATES

(Sections 197 and 198)

Section 197 I.P.C. deals with "issuing or signing false certificate". Section 198 deals with "using as a true certificate known to be false."

Issuing or Signing False Certificate (Section 197): According to Section 197, "Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence."

Haladhara Karji v. Dileswar Subudhi **[1989 Cri. L.J. 629 (Orissa)]:** In this case, it was held that a caste certificate issued by the M.L.A. without specifying caste or tribe of applicants for the purpose of enabling the students to obtain pre-metric scholarships is not a certificate within the meaning of Section 197, IPC. When there was no material or record for coming to a conclusion that the certificates issued were false or the accused issued them knowing or believing that the certificates are false it would not constitute an offence under Section 197 I.P.C.

Using a true certificate known to be false (Section 198): According to Section 198, "Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence."

This section is connected with Section 197 just as Section 196 is connected with Sections 193, 194 and 195.

4. FALSE DECLARATIONS

(Section 199)

Section 199 I.P.C. deals with False Declarations or False Statement made in declaration, which is by law receivable as evidence. It runs as follows:

"Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he give false evidence."

5. CONTEMPT OF COURT

(Section 228)

Section 228 of the Indian Penal Code speaks about "Contempt of Court". It means "intentional insult or interruption to public servant sitting in judicial proceeding." The main object of Section 228 is to punish a person, who intentionally insults in any way the Court administering justice and to preserve the prestige and dignity of the Court. It (Section 228) runs as follows:

"Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

LECTURE-XX

OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

(Sections 268-294 A)

The law relating to the offences affecting the Public Health, Safety, Convenience, Decency and Morals is laid down in Chapter XIV containing Sections 268 to 294 A of the Indian Penal Code, 1860 as stated hereunder:

1. Public Nuisance (Section 268);
2. Public Health (Sections 269-278);
3. Public Safety (Sections 279-299); and
4. Public Decency and Morals (Sections 292-294 A).

1. PUBLIC NUISANCE

(Section 268)

The word 'Nuisance' means "to hurt or to annoy." It is an act or omission interfering with the right of another to enjoy some property, causing damage or physical discomfort. It is of two kinds namely: (1) Private Nuisance, and (2) Public Nuisance. Private Nuisance causes injury, damage or discomfort to an individual or group of individuals.

E.g.: Listening to Radio in loud noise causing inconvenience to neighbours.

Whereas Public Nuisance causes injury or damage or inconvenience to the public at large and people in general.

E.g.: Digging a trench on highway.

Section 268 defines Public Nuisance as "A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury,

obstruction, danger, or annoyance to persons who may have occasion to use any public right."

A common nuisance is not excused on the ground that it causes some convenience or advantage.

***Re Venkata Reddy* (1952) 2 MLJ 554:** In this case, the accused, in front of his house, built a cross bund across the rasta (road). As a result, the flow of rain water was stagnated causing inconvenience to the public. It was held that it was a clear case of public nuisance.

2. PUBLIC HEALTH

(Sections 269-278)

Sections 269 and 270 deal with the "Negligent or Malignant Acts likely to spread infection of any disease dangerous to life." The offender is punishable with two years imprisonment or fine.

Negligent act likely to spread infection of disease dangerous to life (Section 269): "Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Malignant act likely to spread infection of disease dangerous to life (Section 270): "Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Sections 272 to 276 deal with "Adulteration of food, drink, drug, medical preparation intended for sale so as to make it noxious. If lessen its efficacy or change its operation." The offender is punishable with six months imprisonment or fine upto Rs.1,000/- or both.

Adulteration of food or drink intended for sale (Section 272): "Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell

such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Sale of noxious food or drink (Section 273): "Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Adulteration of drugs (Section 274): "Whoever adulterates any drug or medicinal preparation in such a manner as to lessen the efficacy or change the operation of such drug or medicinal preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Sale of adulterated drugs (Section 275): "Whoever, knowing any drug or medicinal preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purpose as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Sale of drug as a different drug or preparation (Section 276): "Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medicinal preparation, as a different drug or medicinal preparation, shall be punished with imprisonment of either description for a

term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

3. PUBLIC SAFETY

(Sections 277-299)

The offences relating to Public Safety are namely:

i) Fouling water of public spring or reservoir is punishable with three months imprisonment or fine upto Rs.500/- or both (Section 277). Section 277 runs as follows—

"Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

ii) Making atmosphere noxious to health is punishable with a fine upto Rs.500/- (Section 278). Section 278 runs as follows—

"Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees."

iii) Rash driving or riding on a public way is punishable upto six months imprisonment and or fine, which may extend to Rs.1,000/- or with both (Section 279). Section 279 runs as follows—

"Whoever drives any vehicle, or rides, on any public way in manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

iv) Rash navigation of vessel is punishable upto 6 months imprisonment or fine of Rs.1,000/- or with both (Section 280). Section 280 runs as follows—

"Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

v)Negligent conduct with respect to poisonous substance, which endangers human life or likely to cause hurt or injury to person is punishable upto six months or fine of Rs.1,000/- or with both (Section 284). Section 284 runs as follows—

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both."

4. PUBLIC DECENCY AND MORALS

(Sections 292-294 A)

The Code provides for the following offences against Public Decency and Morals:

i) Selling, distributing, importing, exporting, publishing, letting to hire any obscene book, pamphlet, drawing, painting representation or figure.

ii) Making, keeping or producing such things for any of such purposes.

iii) Taking part in or receiving profits from any business connected with such things in any way including advertisement.

iv) Offering or attempting to do any of the foregoing offences.

Punishment for the above offences may be imprisonment of either description upto three months or fine or both (Section 292).

Sale etc. of obscene books, etc. (Section 292): "(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever—

a) sells, lets to hire distributes, publicly exhibits or in any manner, puts into circulation or for purposes of sale, hire distribution, public exhibition or circulation, makes, produces or has in his possession, any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited, or in any manner put into circulation, or

d) advertises or makes know by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

e) offers or attempts to do any act which is an offence under this section,

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with

fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees."

Exception: This section does not extent to—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

ii) which is kept or used ***bona fide*** for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on, or in—

i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Sale, etc. of obscene objects to young person (Section 293): "Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees."

Obscene acts and songs (Section 294): "Whoever, to the annoyance of others,

(a) does any obscene act in a public place, or

(b) sings, recites or utters any obscene song, ballad or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Keeping lottery office (Section 294A): "Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

LECTURE-XXI

OFFENCES RELATING TO COIN AND GQVERNMENT STAMPS

(Sections 230-263 A)

Chapter XII containing Sections 230 to 263A lays down the provisions relating to offences relating to Coin and Government Stamps.

Coins (Sections 230-254):

a) Counterfeiting - (Sections 231 & 232)

1. Counterfeiting Coins (Sections 231 & 232)
2. Making or selling instrument for counterfeiting (Sections 233 & 234)
3. Possession of instrument for counterfeiting (Section 235)
4. Abetting in India the counterfeiting of Coin out of India (Section 236)
5. Importing or exporting of Counterfeit Coins (Sections 237 & 238)
6. Delivering Counterfeit Coin knowing it to be so (Sections 239 & 242)
7. Delivering Counterfeit coin not known to be so when first possessed (Section 241)
8. Possession of counterfeit coin knowing it to be so (Sections 242 & 243)

b) Alteration - (Sections 246-254)

1. Diminishing the weight or altering the composition of any Coin (Sections 246 & 247)
2. Altering appearance of any coin to pass it off as a different coin (Sections 248 & 249)
3. Delivering coin possessed with the knowledge that it is altered (Sections 250 & 251)

4. Possessing altered coin knowing it to be so (Sections 252 & 253)
5. Delivering altered Coin which the deliverer did not know to be altered when first possessed (Section 254)

c) Acts of mint employees -

1. Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (Section 244)
2. Unlawful taking from a mint any coining instrument (Section 245)

2. Government Stamps (Sections 255-263A)

1. Counterfeiting a stamp (Section 255)
2. Possession of an instrument for counterfeiting a stamp (Section 256)
3. Making or selling instrument for counterfeiting a stamp (Section 257)
4. Sale of a Counterfeit stamp (Section 258)
5. Possession of a Counterfeit stamp (Section 259)
6. Using as genuine a stamp known to be counterfeit (Section 260)
7. Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (Section 261)
8. Using a stamp known to have been before used (Section 262)
9. Erasure of mark denoting that a stamp has been used (Section 263)
10. Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp or making or possessing any instrument for manufacturing fictitious stamps (Section 263A)

Coin: Meaning and Definition: The term 'Coin' means "only such metal/coin, which is used as money." Indian coin is such metal stamped coin issued by the authority of the Government of India, to be used as money.

"Coin" defined (Section 230): Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Indian coin: Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Illustrations:

a) Cowries are not coin.

b) Lumps of unstamped copper, though used as money, are not coin.

c) Medals are not coins, inasmuch as they are not intended to be used as money.

d) The coin denominated as the company's rupee is Indian coin.

e) The "Farukhabad rupee", which was formerly used as money under the authority of the Government of India, is Indian coin although it is no longer so used.

Offences relating to coins fall under these heads –

1. Counterfeiting.
2. Uttering Coins.
3. Alteration.
4. Offence by mint employees.
5. Government stamps.

1. COUNTERFEITING

1. Counterfeiting coin (Section 230): "Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Explanation: A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

2. Counterfeiting Indian coin (Section 232): "Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine."

3. Making or selling instrument for counterfeiting coin (Section 233): "Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

4. Making or selling instrument for counterfeiting Indian coin (Section 234): "Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purposes of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting Indian coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

5. Possession of instrument or material for the purpose of using the same for counterfeiting coin (Section 235): "Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

If Indian coin: and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

6. Abetting in India, the counterfeiting out of India of coin (Section 236): "Whoever, being within India, abets the counterfeiting of coin out of India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within India."

7. Import or export of counterfeit coin (Section (237): "Whoever imports into India, or exports therefrom any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

8. Import or export of counterfeits of the Indian coin (Section 238): "Whoever imports into India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

2. UTTERING COINS

a) Fraudulent delivery of coin possessed with knowledge that it is counterfeit or attempting to induce any person to receive it – 5 years and fine, for Indian coin – 10 years and fine. Sections 239 and 240 runs as follows—

Delivery of coin, possessed with knowledge that it is counterfeit (Section 230): "Whoever, having any counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine."

Delivery of Indian coin possessed with knowledge that it is counterfeit (Section 240): "Whoever, having any counterfeit coin, which is a counterfeit of Indian coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of Indian coin, fraudulently or with intent that fraud may be committed delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

b) Delivery of counterfeit coin not known to be so when first possessed but discovered to be so later on – two years or fine upto 10 times the value of the coin counterfeited or both (Section 241). It runs as follows—

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit (Section 241): "Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both."

Illustration:

A, a coiner, delivers counterfeit company's rupees to his accomplice, B, for the purpose of uttering them. B sells the rupees to C, another, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives, them not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under Sections 239 or 240, as the case may be.

c) Fraudulent possession of a counterfeit coin knowing it to be so – any coin – three years and fine; Indian coins – seven years and fine (Sections 242-243). These two sections runs as follows—

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof (Section 242): "Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof (Section (243): "Whoever fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of Indian coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

3. ALTERATION OF COIN

1. Fraudulently or dishonestly diminishing the weight or altering composition of any coin – three years and fine, Indian coin – seven years and fine (Sections 248-257).
2. Altering appearance of any coin to pass off as different coin – three years and fine, altering Indian coin – seven years and fine (Sections 248-249). These two sections runs as follows—

Altering appearance of coin with intent to that it shall pass as coin of different description (Section 248): "Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Altering appearance of Indian coin with intent that it shall pass as coin of different description (Section 249): "Whoever performs on any Indian coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

3. Fraudulent delivery of or attempt to induce any person to receive coin possessed with knowledge that it is diminished or altered. Any coin – five years and fine; Indian coin – ten years and fine (Sections 250-251). These two sections runs as follows—

Delivery of coin possessed with knowledge that it is altered (Section 250): "Whoever, having coin in his possession with respect to which the offence defined in Section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

Delivery of Indian coin possessed with knowledge that it is altered (Section 251): "Whoever, having coin in his possession with respect to which the offence defined in Section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

4. Fraudulent possession of such coin with such knowledge. Any coin – three years and fine; Indian coin – five years and fine (Sections 252-253). These two sections runs as follows—

Possession of coin by person who knew it to be altered when he became possessed thereof (Section 252): "Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Section 246 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Possession of Indian coin by person who knew it to be altered when he became possessed thereof (Section 253): "Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined

in either of the Section 247 or 249 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

5. Fraudulent delivery of such coin innocently received but subsequently known to be such coin – two years or with fine upto ten times the value of the coin for which such coin is passed (Section 254).

The expression 'such coin' under this head means diminished or altered coin. Section 254 runs as follows—

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be altered (Section 254): "Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Section 246, 247, 248 or 249 has been performed but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed."

4. OFFENCE BY MINT EMPLOYEES

1. Causing coin to be of different weight or composition from that fixed by law – seven years and fine (Section 244). Section 244 runs as follows—

Person employed in mint causing coin to be of different weight or composition from that fixed by law (Section 244): "Whoever, being employed in any mint lawfully established in India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Unlawfully taking coining tool or instrument out of mint – seven years and fine (Section 245). Taking without lawful authority is unlawful taking. This offence may be committed by mint employees as well as others. Section 245 runs as follows—

Unlawfully taking coining instrument from mint (Section 245): "Whoever, without lawful authority, takes out of any mint, lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

5. GOVERNMENT STAMPS

1. Counterfeiting Government stamps or performing any process of counterfeiting – imprisonment for life or ten years and also fine (Section 255). A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination (Explanation). Section 255 runs as follows—

Counterfeiting Government stamps (Section 255): "Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Explanation: A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

2. Possession of instrument or material for counterfeiting a stamp with knowledge or belief that it may be so used – seven years and fine (Section 256). Section 256 runs as follows—

Having possession of instrument or material for counterfeiting Government stamp (Section 256): "Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

3. Making or selling instrument for counterfeiting Government stamp – seven years and fine (Section 257). Section 257 runs as follows—

Making or selling instrument for counterfeiting Government stamp (Section 257): "Whoever makes or performs any part of the process of making, or buys or sells, or disposes of, any instrument for the purpose of being used or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

4. Sale of a counterfeit Government stamp – seven years and fine (Section 258). Section 258 runs as follows—

Sale of counterfeit Government stamp (Section 258): "Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

5. Possession of counterfeit Government stamp – seven years and fine (Section 259). Section 259 runs as follows—

Having possession of counterfeit Government stamp (Section 259): "Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

6. Using as genuine Government stamp known as counterfeit – seven years or fine or both (Section 260). Section 260 runs as follows—

Using as genuine a Government stamp known to be a counterfeit (Section 260): "Whoever uses as genuine any stamp, knowing it to be counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

7. Effacing writing from substance bearing Government Stamp, or removing from document a stamp used for it, with intent to cause loss to Government – three years or fine or both (Section 261) Section 261 runs as follows—

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it with intent to cause loss to Government (Section 261): "Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

8. Using used Government stamp – two years or fine or both (Section 262). Section 262 runs as follows—

Using Government stamp known to have been before used (Section 262): "Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

9. Erasure of marks denoting that a stamp has been used – three years or fine or both (Section 263). Section 263 runs as follows—

Erasure of mark denoting that stamp has been used (Section 263): "Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells, or disposes of any such stamp from which such mark has been erased or removed, or sells, or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

10. Making, altering, dealing in, selling and or using for postal purposes, fictions stamp or possessing it or possessing any instrument for manufacturing such stamp – fine upto Rs.200/- and forfeiture of stamp and instrument (Section 263 A). Section 263A runs as follows—

Prohibition of fictitious stamp (Section 263A): "(1) Whoever—

(a) Makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp; or

(b) Has in his possession, without lawful excuse, any fictitious stamp; or

(c) Makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

Shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or material in the possession of any person for making any fictitious stamp may be seized and if seized shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by the Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in Section 17, be deemed to include the person or persons authorised by law to administer executive Government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country."

Penalties: Penalty indicated against each offence is the maximum penalty that may be inflicted, any lesser penalty may meet the ends of justice according to the circumstances of a case. Imprisonment may be simple or rigorous, i.e. of either description unless specified to the contrary.

UNIVERSITY QUESTION PAPERS

Code No.5739

FACULTY OF LAW

B.A.LL.B. (5 YDC) III Year V Semester Examination, January/February 2015

Subject: LAW

Paper-I: CRIMINAL LAW-I

Time: 3 Hours] [Max. Marks: 80

PART-A

Answer any **Five** questions: **(5x6=30 Marks)**

1. Contributory negligence
2. Vicarious liability
3. Ignorantia legis neminem excunat
4. Good faith
5. Rioting
6. Coin, Indian coin and counterfeiting coin
7. Illegal omissions
8. Harbouring

PART-B

Answer any **Two** questions: **(2x15=30 Marks)**

9. "The jurisdiction of the Indian Criminal Courts is territorial as well as extra territorial". Explain.
10. What are the limitations for exercising private defence under Indian Penal Code?
11. Explain the offence of unlawful assembly with illustrative case.
12. Write a note on offences against public justice.

PART-C

Answer any Two questions: **(2x10=20 Marks)**

13. A with an intention to pick-pocket puts his hand into B's pocket. B has a loaded pistol in his pocket. The thief touches the pistol and trigger goes off, whereby B is shot dead. What offence did A commit?

14. P, Q & R had a common intention to rob S. While P & Q entered the house of S and beat and robbed him, R stood outside to warn P and Q of any danger. On being prosecuted along with P and Q, R pleaded that he did neither commit the robbery nor caused injuries to S and hence was not guilty of any offence. Do you agree with his plea?

15. A offers a bride to B, a Public servant, as a reward for showing A some favour in the exercise of B's official function. B refuses to accept the bride. Is A liable for any offence or not?

16. X professed that he was a messenger of Lord Vishnu and representative of Lord Jagannath himself and any one who does not vote for him would be a sinner against the Lord and Hindu religion. What offence did X commit?

Code No. 3155/BL

FACULTY OF LAW

B.A. LL.B. (5 YDC) III - Year V - Semester Examination, May/ June 2016

Subject: LAW

Paper : I : Criminal Law -1

Time : 3 hours **Max. Marks : 80**

PART-A (5 x 6 = 30 Marks)

Answer any Five questions.

1	Territorial Jurisdiction	5	Fabricated evidence
2	Mistake of Fact	6	Obscene acts
3	Abetment	7	Death sentence
4	Unlawful assembly	8	Illegal Gratification

PART-B (2x15 = 30 Marks)

Answer any Two questions.

9 Explain briefly the applicability of mens rea under criminal law.

10 Differentiate between common intention and common object.

11 What are the offences relating to election?

12 Explain the offences relating to health and safety under IPC.

PART-C (2x10 = 20 Marks)

Answer any Two questions

13 A child of 9 years old had stolen a loaf of bread worth Rs.10/- whether he is liable or not. If so under which offence? What is the punishment?

14 One girl was called by X, in the public by uttering that he will have illegal contact with her. Whether it amounts to an offence or not? If so, under which section of IPC, what is the punishment?

15 Swamy was suffering from high fever and he was sleeping. His two children were playing in the front room. After some time they started crying. He was annoyed with the noise and he went to the children and cut the throat of both the children and again went to sleep. He was arrested and produced before the court. He pleads insanity at the moment of commission of offence. State whether he is punishable or not? If so what is the punishment and under which section?

16 A set fire to his own house and filed a complaint against his servant. Advice the servant what to do? Who is punishable? If so what is the offence and what is the punishment?

Code No. 3164

FACULTY OF LAW

B.A.LL.B. (5-YDC) III Year VI Semester Examination, May/June 2016

Subject: LAW

Paper - I : Criminal Law - II

Time: 3 Hours **Max.Marks: 80**

PART - A (5x6 = 30 Marks)

Answer any five of the following.

1. Section 304-B of IPC
2. Extortion
5. Section 498-A of IPC
6. Criminal Intimidation

3. Breach of trust
4. Wrongful restraint
7. False evidence
8. Kidnapping

PART - B (2x15 = 30 Marks)

Answer any two of the following.

9. Define murder, when culpable homicide not amounts to murder.
10. Explain the law relating to mischief.
11. Discuss the offences against marriage?
12. Differentiate between robbery and dacoity.

PART - C (2x10 = 20 Marks)

Answer any two of the following.

13. The accused and his wife's relations were entranged and they were yet to be divorced by the court. Suddenly there was a fire in the house in which the wife was burnt to death. There were no signs of struggle and the husband was present in the house at that time. Whether it is murder or accident.
14. A finds a ring belonging to B on a table in the house of B. A silently removed the ring and put in his pocket. What it amounts to?
15. A knowing that B is carrying 10 lakh rupees, planned to rob that money. He set out in a jeep, armed with a gun and drives out looking for B. What offence did A commit.
16. Z wrote a letter to a nurse containing indecent words and sends it to her by post though he had no previous acquaintance with her. Whether it amounts to insulting the modesty of a woman or not. Decide.

Code No. 644

FACULTY OF LAW

B.A. L.L.B. (5 YDC) III - Year V - Semester Examination, Jan. / Feb. 2017

Subject: LAW

Paper : I : Criminal Law

Time : 3 hours **Max. Marks : 80**

PART-A (5 x 6 = 30 Marks)

Answer any Five of the following.

1. Actus reus
2. Reformative theory
3. Dishonesty
4. Sedition
5. Public nuisance
6. Attempt
7. Bribery
8. Imprisonment for life

PART - B (2 x 15 = 30 Marks)

Answer any Two of the following.

9 Define crime and what are the stages of crime?

10 What are the offences relating to Army, Navy and Air force?

11 Death sentence in the highest punishment under IPC Argue in favour and against death sentence.

12 What are the offences committed by public?

PART—C (2 x 10 = 20 Marks)

Answer any Two of the following.

13 A boy of 12 years along with his two friends committed gang rape of a girl of 10 years. He pleads act of child. State whether he along with others are punishable or not? If so what is the punishment?

14 There was a sudden fight between two persons one was fully intoxicated and he took a big stone and lit the head of the other. Victim died on the spot. State whether the intoxicated person in punishable or not. Give reasons for and against the act.

15 A in his house was preparing fire crackers, due to carelessness of the employees there was a blast. It spread to all the houses

and there was huge damage to the property and 8 persons including 3 children died and 25 injured seriously. What was the offence committed by the owner? Whether it amounts to an offence? If so what is the punishment for such act?

16 ABC and D agreed to loot a bank. A, opened the locker all the other looted the bank they saw police coming and they started their car. Car was chased by police, three jumped from the running car and the driver was caught by the police. Driver was arrested and brought before the court. Driver argued that he did not know that they came to loot the bank. State whether driver is punishable or not? Whether all are punishable or not? If so what offence did they commit. What is the punishment?

FACULTY OF LAW

B.A.LL.B. (5 YDC) III -Year VI-Semester Examination, May 2017

Subject: LAW

Paper-I Criminal Law - II

Time : 3 Hours **Max. Marks : 80**

PART - A (5x6=30 Marks)

Write short notes on any FIVE of the following:

1	Attempt to suicide	5	Kidnapping
2	Gang Rape	6	Forged Document
3	Breach of Trust	7	Grevious Hurt
4	Decoity	8	Section 498-A of IPC

PART - B (2x15= 30 Marks)

Answer any TWO of the following questions:

9 Define Murder, Distinguish between culpable homicide and murder.

10 Write a brief note on criminal Trespass.

11 Explain the law relating to Mischief

12 What are the offences relating to documents?

PART - C (2x10 = 20 Marks)

Answer any TWO of the following questions:

13 A lady believing her cousin's words proceeded to city without intimating her home. After coming to the city her cousin sold the lady in the red light area. What offence did the cousin commit? What is the punishment?

14 Raji was admitted in the hospital for some treatment. Around 11 pm she was called by the duty nurse starting that the doctor wants to examine her. She took Raji to the doctors cabin, where she was given anesthesia and was raped by the doctor. Next day she came to know that she was raped. Advice her regarding the offences of the doctor and the nurse. What offence did doctor and nurse commit?

15 Due to the medicine prescribed by the doctor, the child in the womb dies. State whether it amounts to an offence, if so what offence did the doctor commit?

16 A girl was harassed by a boy by morphing the pictures of the girl which were obscene in nature and further uploaded on internet. As the girl came to know she felt that her and her family reputation was damaged and she committed suicide. State whether the boy is punishable, if so under which section of IPC.

Code No. 9604

FACULTY OF LAW

B.A. LL.B. (5 YDC) / B.B.A. LL.B. (5 YDC) / B.Com. LL.B. (5 YDC) III-Year VI - Semester Examination, May/ June 2018

Subject: LAW

Criminal Law-II

Time : 3 hours **Max. Marks : 80**

PART -A (5 x 6 = 30 Marks)

Answer any Five of the following :

1 Dowry death

5 Criminal force

2 Criminal Misappropriation
3 Custodial rape
4 Abduction
6 Wrongful confinement
7 Assault
8 Criminal Intimidation

PART - B (2 x 15 = 30 Marks)

Answer any Two of the following:

9 Define Murder. State when culpable homicide does not amount to murder.

10 Write a brief note on Cheating.

11 Differentiate between Theft and extortion

12 Define Defamation. State exceptions if any, to this offence.

PART-C (2x10 = 20 Marks)

Answer any Two of the following:

13 A Will was written by the father in the name of his sons, just before his death. After the death of the father his daughters changed the Will. State what action can be taken against the daughters? Whether they are punishable under the IPC ?

14 Rohan and Ritu got married 5 years back and they did not have a child till date, due to which husband and in laws want to get rid of Ritu. They started giving slow poison pills which were banned by the government. As a results Ritu died. Who is responsible for her death? What is the punishment?

15 A blind girl was standing near the bus stop. A boy along with his friends came near the girl and said that they are going to help her to climb the bus and took the girl along with them. As she started, they forcibly diverted the girl and took her behind the bushes and sexually assaulted her. Advice and help her.

16 A husband knowingly gave false information to his own wife that a lady was suffering from cancer and that she would die within a month and he wanted to marry her. Believing in good faith, the wife consented to marry the cancer patient to her husband. After the marriage, she came to know that he deceived her. State whether this act amounts to a crime or not. What shall be the punishment?

Code No.9851

FACULTY OF LAW

LL.B. (3 YDC) / LL.B. (3 YDC) (Hons.)I -Year II-Semester Examination, August / September 2018

Subject: LAW

Paper — IV - Law of Crimes

Time : 3 Hours **Max, Marks : 80**

PART - A (5x6=30 Marks)

Answer any FIVE of the following:

1 Negligence
2 Attempt
3 Death Penalty
4 Wrongful restraint
5 Acid attack
6 Voyeurism
7 Mischief
8 Arson

PART - B (2x15 =30 Marks)

Answer any TWO of the following questions:

9 Explain the Territorial and extra territorial application of Indian Penal Code, 1860.

10 What are general exceptions under Criminal Law? Give suitable examples.

11 Explain the essential ingredients of the offence of Defamation.

12 Discuss the difference between wrongful restraint and wrongful confinement.

PART - C (2x10 = 20 Marks)

Answer any TWO of the following questions:

13 Eight persons armed with deadly weapons rob a bank by threatening the bank employees. Discuss the offence committed.

14 A, a surgeon in good faith. Communicates to a patient his opinion that the patient cannot live. The patient dies in consequence of a shock. Did A commit any offence.

15 A, knowing that B murdered Z, assists B to hide the body with the intention of saving B from punishment. Is A liable for any offence.

16 A appears as a witness before Z, a magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A by hearing this is moved to sudden passion and kills Z. Discuss the offence committed by A.

Code No. 15265

FACULTY OF LAW

BA.LL.B. (5 YDC) III -Year V-Semester Examination, January 2019

Subject: LAW

Paper-1: Criminal Law-1

Time: 3 Hours **Max. Marks: 80**

PART - A (5x6=30 Marks)

Answer any FIVE of the following:

1 Consent
2 Necessity
3 Mistake
4 Actus Reaes
5 Knowledge
6 Negligence
7 False Evidence
8 Offence against election

PART-B (2x15 = 30 Marks)

Answer any TWO of the following questions

9 Explain the offence relating to public tramprility.

10 Discuss the Extra-territorial operation of IPC.

11 Explain the law relating to criminal conspiracy

12 Explain the offences relating to Elections

PART - C (2x10 = 20 Marks)

Answer any TWO of the following questions:

13 A corporation was guilty of committing on offence under the Prevention of Food Adulteration Act, 1954, can the corporation criminally held liable.

14 A hit B on the Head with a stick and thereby killed him. He defended himself by saying that he did not Intend to Kill B. Discuss the liability of A.

15 A servant committed public nuisance by obstructing a highway road while doing his master's employment. Who will be held responsible.

16 X is a member of an unlawful Assembly and discovered that Y was his old friend and wished that his old should not be killed because of the attack of unlawful Assembly. But Y dies during the attack. Discuss the liability of X.

Code No. 15109/BL

FACULTY OF LAW

LLB. (3 YDC) / LL.B (Hon.) (3 YDC) I - Year II Semester Examination,

July/August 2019

Subject: LAW

Paper-IV

Law of Crimes

Time: 3 Hours **Max. Marks: 80**

PART -A (5x6 =30 Marks)

Answer any Five of the following.

1 Solitary confinement
2 Instigation by conspiracy
3 Forgery
4 Cheating
5 Adultery
6 Offence
7 Wrongful gain
8 Joint Liability

PART -B (2x15 =30 Marks)

Answer any Two of the following.

9 "All murders are culpable homicides, but all culpable homicides are not murders". Discuss

10 Define the offences relating to documents.

11 Discuss the offences relating to marriage.

12 Define theft and distinguish between extortion robbery and dacoity.

PART - C (2x10 = 20 Marks)

Answer any Two of the following.

13 A with an intention to steals puts his hand in 'Y' pocket and finds nothing. Has 'A' committed any offence?

14 X has injured 'Y' by throwing acid on her face to disfigure her face due to an grudge against 'Y'. Discuss the liability.

15 A, a lunatic committed the murder of B during lucid interval as already there was rivalry between them. Discuss the liability of A.

16 There was an heated argument between two friends while the argument was going on one of the friends hit with his fist on the left side of the chest of another. The-result was the sudden death of the person. Discuss the liability of the one who has hit him.

Code No. 15265 / BL

FACULTY OF LAW

B.A.LL.B. (5 YDC) III - Year V - Semester Examination, July / August 2019

Subject: LAW

Paper-I

Criminal Law -1

PART - A (5x6 = 30 Marks)

Answer any Five of the following.

Time: 3 Hours **Max. Marks: 80**

1 Attempt

2 Common Object

3 Reformative Theory

4 Riot

5 Death Sentence

6 Sedition

7 False Evidence

8 Adulteration of Drugs

PART – B (2x15 = 30 Marks)

Answer, any Two of the following.

9 Write a brief note on the essential elements of crime.

10 What are the general exceptions under IPC?

11 What are the offences committed by public servants under IPC?

12 Write a brief note on law relating to morals and decency with suitable exemption.

PART -C (2x10 = 20 Marks)

Answer any Two of the following.

13 "Pre-marital sex and live-in-relation now-a-days became common in Hyderabad" said by a popular person in a public meeting. Many women including NGO's organization on behalf of women filed a criminal case. What was the offence committed by that person. If so what will be the punishment.

14 A complaint was lodged by a Jeweller that his shop was robbed by unknown persons. The intention behind was to file a false claim with the insurance company. After investigation it was came to know that he pretended and filed false case. But he did not submitted the same to the Insurance Company. State whether the Jeweller had committed any offence. If so what?

15 Sri Ram was shot dead by four people who were standing in the dark on road side. All the four were arrested based on hearsay evidence. There was no eye witness. State whether all the four are punishable or not.

16 Mr. & Mrs. Suman got married and after 3 years they want to go for mutual divorce. While the case was pending in the court Mr. Suman got married with another lady. What offence did Mr. Suman committed? What will be the punishment?

Code No. 15272

FACULTY OF LAW

BA LL.B. (5 YDC) / BBA LL.B (5 YDC) / B.Com LL.B (5 YDC) III - Year VI- Semester Examination, July / August 2019

Subject: LAW

Paper - Criminal Law - II

Time: 3 Hours **Max. Marks: 80**

PART - A (5x6 = 30 Marks)

Answer any Five of the following.

1 Bigamy
2 Mischief
3 Criminal breach of Trust
4 Forged document
5 Marital rape
6 Wrongful restraint
7 Cheating
8 Injury to unborn children

PART – B (2x15 = 30 Marks)

Answer any Two of the following.

9 Write a brief note on offences relating to marriage with special reference to sec. 498-A.

10 Differentiate between
   a) Robbery & Dacoity.
   b) Extortion and theft

11 Discuss the law relating to offences against property.

12 Definer Murder. What are the exceptions to murder?

PART - C (2x10 = 20 Marks)

Answer any Two of the following.

13 Roja, a married woman had illegal contacts with a male person. State whether the woman is liable, if so, under which section of IPC.

14 A shakes his fist at B intending it to be likely that he may there by cause B to believe that A is about to attack B. Is A guilty of any offence? If so state.

15 A committed suicide. Before the death there were bodily injuries on the body. State under which section the case falls and what is the punishment?

16 For nearly 10 days A placed 3 men with firearm at the entrance of a building and tells Z that they will fire at Z if Z attempts to leave the building. State what offence A committed. What will be the punishment?

Code No. 15674

FACULTY OF LAW

LL.B (3 YDC) / LLB (Hons.) (3 YDC) I Year II Semester Examination, August / September 2019

Subject: Law

Paper: IV: Law of Crimes

Time: 3 Hours **Max. Marks:80**

PART - A (5 x 6 = 30 Marks)

(Short Answer Type)

Note: Answer any five questions from the following:

1. Insanity
2. Actus Reus
3. Bigamy
4. Section 304-B
5. Mischief
6. Perjury
7. Sedition
8. Extortion

PART-B (2 x 15 = 30 Marks)

Note: Answer any two questions from the following.

9. Discuss the difference between culpable homicide and Murder
10. Explain the slope of the Maxim "Actus non facit reum mens sit rea".
11. Define Kidnapping and distinguish it from 'Abduction'.
12. Explain the stages of crime.

PART - C (2 x 10 = 20 Marks)

Note: Answer any two questions from the following.

13. X was raped by four persons in a running bus and tried to kill her. Subsequently X died in the hospital. Discuss the liability & Punishment.
14. A game false evidence, by which Mr. D, an innocent person was convicted with death sentence. Discuss the liability and offence committed by A.
15. 'A' and 'B' are friends. 'A' due to sudden quarrel, gave a blow to 'B'. 'B' sustained Injuries B filed a case for attempt to murder. Discuss.
16. Four members armed with deadly weapons. Entered a bank and robbed the bank. Discuss the offence.

Code No. 5114

FACULTY OF LAW

L.L.B. (3 YDC) / L.L.B. (Hon) (3 YDC) I -Year II-Semester Examination, December 2020

Subject: Law

Paper - IV - Law of Crimes

Time: 2 Hours Max. Marks:80

PART - A

Answer any four of the following. (4x10 = 40 Marks)

1	Preparation	5	Cheating
2	Solitary Confinement	6	Extortion
3	Knowledge	7	Affray
4	Grievous hurt	8	Forgery

PART - B

Answer any one of the following. (1 x 20 = 20 Marks)

9 Discuss about the concept, meaning and definitions of crime.

10 Explain the essential ingredients to establish the offence of sedition.

11 What are the exceptions to the offence of murder under Indian Penal Code?

12 Explain various offences relating to marriage.

PART - C

Answer any one of the following. (1 x 20 = 20 Marks)

13 Mr. X with an intention to kill Y stabs him on his abdomen, Y who is a patient already, dies immediately because the stab on the abdomen accelerates the death. X is charged of murder. Discuss.

14 Three persons form into a group and plan to rob a bank. While they were trying to rob the bank, the bank authorities informs the police and police arrives and takes one person into custody. While the other two escaped. Discuss the liability of each person.

15 X confines Y and threatens him that he will kill Y if he does not sign on transfer papers of Y's property in his name. Discuss the nature of the offence committed by X.

16 X with an intention to steal the pocket of Y puts his hand in Y's pocket and finds nothing. Is he liable for any offence?

Code No. 5265

FACULTY OF LAW

B.A. LL.B. (5 YDC) III - Year V - Semester Examination, January 2020

Subject: Law

Paper- I

Criminal Law - I

Time: 3 Hours **Max. Marks:80**

PART - A (5x6 = 30 Marks)

Answer any Five of the following.

1 *Mens Rea*

2 Territorial Jurisdiction

3 Common intention

4 Insanity

5 Death Sentence

6 Illegal Gratification

7 Obscene Acts

8 Conspiracy

PART - B (2x15 = 30 Marks)
Answer any Two of the following.

9 Define crime and explain the stages of crime.

10 What are the general exceptions under criminal law?

11 Explain briefly the offences committed by public servants.

12 What are the offences committed against public health and safety.

PART - C (2x10 = 20 Marks)
Answer any Two of the following.

13 A, B, C and D gathered in a hotel and were planning to kill one famous singer. Among them C was not interested. The crime was committed and all the four were arrested and brought before the court. What punishment will be awarded for all the four and under which sections?

14 Based upon the evidence given by the witness, sessions Court - awarded death sentence for an accused person. Afterwards the court came to know that the witness had given false evidence. State whether the witness is punishable or not if so, what will be the punishment.

15 Suman was sending obscene messages during night time and harassing Rita. What offence did Suman committed? Whether it is punishable under IPC if so, what is the punishment?

16 Rajan was arrested while he was receiving Rs. 1 lakh during a settlement in his office. What offence did Rajan committed, under which provision of IPC he will be made liable. Discuss.

Code No. 866

FACULTY OF LAW

B.A. LL.B.(5 YDC) III Year V Semester Examination, February 2021

Subject: Law

Paper- I

Criminal Law - I

Time: 2 Hours **Max. Marks:80**

PART - A

Note: Answer any four questions of the following. (4 x 10 = 40 Marks)

1 *Mens rea*
2 Extra-territorial jurisdiction
3 Public servant
4 Wrongful gain
5 Common intention
6 Riot
7 Sedition
8 Forgery

PART - B

Note: Answer any one question. (1 x 20 = 20 Marks)

9 Discuss the liability for the offences committed beyond India.

10 Explain the general defences available to exempt liability.

11 Explain the offences relating to public tranquility.

12 Explain the law relating to false evidence.

PART - C

Note: Answer any one question. (1 x 20 = 20 Marks)

13 A tells B that he is going to murder C. B says in reply. "You may do as you like and face the consequence" A kills C. B is charged of abetment. Discuss.

14 A has stored many weapons and unlawful objects in his house with an intention of using it for committing an offence. Is A liable for any offence.

15 A riot take place on the land of one X during the course of which, Y was killed. Is X liable for the death of Y?

16 If someone points a gun to X head and asks X to make a threatening call. Is X liable for the call?

Cocde No. 872

FACULTY OF LAW

BA LL.B (5 YDC) / B.Com LL. B. (5 YDC) / B.B.A. LL.B. (5 YDC) III - Year VI - Semester Examination, August 2021

Subjeet: LAW

Paper: I/III Criminal Law-II

Time: 2 hours Max. Marks: 80

PART-A

Note: Answer any four questions. (4 x 10 = 40 Marks)

1 Grave Provocation
2 Death Sentence
3 Cruelty
4 Kidnapping
5 Wrongful restraint
6 Voyeurism
7 Bigamy
8 Mischief

PART-B

Note: Answer any one question. (1 x 20 =20 Marks)

9 Explain the difference between culpable homicide and murder.

10 Explain the law relating to forgery.

11 Discuss the exceptions to the offence of Defamation.

12 Write a brief note on the recent developments in rape laws.

PART - C

Note: Answer any one question. (1 x 20 = 20 Marks)

13 A rapes B. B is so enraged that she commits suicide. Is A liable of any offence?

14 A induces a woman to cohabit with him under a promise of marriage which she never intending to fulfill his promise. Is A guilty of committing any offence.

15 A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. Did A committed any offence? Discuss.

16 A, a police officer tortures Z in order to induce Z to confess that he has committed a crime. Is A guilty of an offence.

Code No. 866/BL

FACULTY OF LAW

BA LL. B (5 YDC) III - Year V - Semester Examination, August/September 2021

Subject: Law

Paper: I - Criminal Law - I

Time: 2 hours **Max. Marks: 80**

PART-A

Note: Answer any four questions (4 x 10 = 40 Marks)

1 Mistake

2 Impossible Attempts

3 Difference between Crime and Contract

4 Preparation

5 Illegal Gratification

6 Imprisonment

7 Counterfeit of Coins

8 Morals and Decency

PART-B

Note: Answer any one question (1 x 20 = 20 Marks)

9 Write a brief note on *Mens rea*. State with two examples where mens rea is not necessary.

10 Write a brief note on General exceptions with special reference to private defence.

11 What are the offences relating to public Peace. With special reference to Section 153-A of IPC.

12 What are the offences relating to Public Health and Safety?

PART-C

Note: Answer any one question **(1 x 20 = 20 Marks)**

13 Mohan was the authorized owner of a ration shop. He appointed an employee to look after his shop. In his absence his employee is the whole and sole person who maintains the shop. One day, while going home he gave two token which are supposed to be given at the shop. Next day other customers objected for giving tokens outside the shop and a criminal case was filed against the owner and his employee. State what will be the liability under Criminal Law against the owner and the employee.

14 A communal riot broke between Hindus and Muslim in one of the parts of Hashipur. A group of Hindus mob destructed and looted Muslim shops and the mob was proceeding towards a Muslim home and starting beating on the door. At that moment the male person in that house fired two times, as a result one died and the other injured. A criminal case was filed against him. State what offence did the Muslim male person committed? What will be the punishment? If so.

15 Three boys aged 13 years, 14 years & 15 years committed gang rape and killed victim aged 13 years aged. State whether the Juveniles can be brought under the umbrella of doli in capax or not? If so what is the punishment for all the three?

16 A leader of the political party died all of a sudden, and there were political crises in the state. One party member give bribe of Rs.1,00,00,000/- to vote on behalf of their party in the Assembly. Opposite party filed a criminal case stating that this amounts to conspiracy and an offence committed by public servant. State whether the legislator have any immunity or not?

FACULTY OF LAW

BA LL.B. (5 YDC) III Year V Semester Examination, December 2021

Subject: Law

Paper: I – Criminal Law – 1

Time: 2 Hours **Max Marks: 80**

PART - A

Note: Answer any four questions. (4 x 10 = 40 Marks)

1. Good faith
2. Attempt
3. Riot
4. Necessity
5. Extradition
6. Government stamp
7. Omissions
8. False Evidence

PART - B

Note: Answer any one question. (1 x 20 = 20 Marks)

9. Define Crime. State the essential elements of crime?
10. Explain the Territorial Jurisdiction of IPC.
11. Explain the offences against the State.
12. What are the offences relating to elections?

PART - C

Note: Answer any one question. (1 x 20 = 20 Marks)

13. A with an intention of pick-pocket puts, his hand into B's pocket. B has a loaded Pistol in his pocket. A the thief touches the pistol and triggers goes off, due to which B is shot dead. Is A liable?
14. One girl was called by X, in the Public by uttering that he will have illegal contact with her. Is X liable of any offence?

15. A offers bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official function. B refuses to accept the bribe. Is A liable for any offence? Discuss.

16. A and B injured C as a result of which C died. A's intention was to kill C, but B's intention was only to injure. Explain the liability of both A and B.

FACULTY OF LAW

BA LL.B. (5 YDC) III Year V – Semester Examination, April/May 2022

Subject Law

Paper: I – Criminal Law – 1

Time: 3 Hours **Max Marks: 80**

PART - A

Note: Answer any five questions. (5 x 6 = 30 Marks)

1. Attempt
2. Extra territorial jurisdiction
3. Perjury
4. Difference between crime and tort
5. Bribery
6. Riot
7. Morals and decency
8. Section 153-A of IPC

PART - B

Note: Answer any two questions. (2 x 15 = 30 Marks)

9. Define crime and state the essentials of crime.
10. What are the acts which are justifiable and excusable? Give one example for each.
11. Differentiate between common intention and common object. Give suitable examples for both.
12. Write a brief note on provisions relating to health and safety under IPC.

PART - C

Note: Answer any two questions. (2 x 10 = 20 Marks)

13. Mr. Raju along with five others went to kill a person whom he intended. As the person was not available, instead of that person he killed his two daughters. State under which provisions of IPC a criminal case can be registered?

14. Suman went to a supermarket and picked some goods and went out of the supermarket without paying for the same. The employees of the supermarket alleged that she committed theft and a criminal case was filed against her. In her defense, she said that she is a diabetic depressed patient and she out of depression did not pay the amount for the goods. State whether her act can be brought under any exceptions of IPC?

15. Sultana bibi has a son and two step sons. Two step sons along with one of their relative killed Sultana bibi. A criminal case was filed against all the three. After three months Sultana's son filed a petition on behalf of his step brothers stating that it is their internal and family matter and requested the Court to release the accused. If you are a Judge what will you do? Whether you can release or punish the accused?

16. Mr. Rajeshwar, President of a co-operative society committed fraud of Rs. 1,00,00,000/-, a criminal charge was pending against him. Meanwhile, Government notified municipal election and he contested for mayor and won the election. Mr. Narain an advocate filed a case stating that Mr. Rajeshwar concealed the fact that a criminal trial was pending before the Criminal Court. State what offence did Mr. Rajeshwar committed and what will be the punishment?